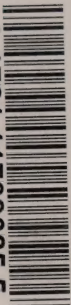


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the Great Seal of the Province
of Nova Scotia.

(RETURN AND SUPPLEMENTARY RETURN TO ADDRESS.)

CORRESPONDENCE

RELATING TO THE

G R E A T . S E A L

OF THE

PROVINCE OF NOVA SCOTIA

BEING AFFIXED TO DOCUMENTS REQUIRING THE SAME.

Printed by Order of Parliament.



OTTAWA:

PRINTED BY MACLEAN, ROGER & Co., WELLINGTON STREET

1877

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Canada, Secretary of State, Dept. of the

(RETURN AND SUPPLEMENTARY RETURN TO ADDRESS.)

CORRESPONDENCE

RELATING TO THE

GREAT SEAL

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OTTAWA:

PRINTED BY MACLEAN ROGER & Co., WELLINGTON STREET.

1877

RETURN

TO AN ADDRESS OF THE HOUSE OF COMMONS, dated 12th March, 1877;
For copies of all correspondence between the Imperial Government
and the Dominion Government; and between the Dominion Govern-
ment and the Provincial Government of Nova Scotia, relating to the
Great Seal of the Province that has been affixed to all documents
requiring the same, since Confederation.

By Command,

(Signed) R. W. SCOTT,

Secretary of State.

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 13th March, 1877.

The Secretary of State for the Colonies to the Governor-General.

DOWNING STREET,
14th October, 1868.

(Canada Separate.)

MY LORD,—I have the honour to enclose a certified copy of Her Majesty's
Warrant of Assignment of Armorial Bearings, for the Dominion and Provinces of
Canada, which has been duly enrolled in Her Majesty's College of Arms, and I have
to request that your Lordship will take such steps as may be necessary for carrying
Her Majesty's gracious intentions into effect.

I have, &c.,

(Signed) BUCKINGHAM & CHANDOS.

To Governor
The Right Hon. VISCOUNT MONK,
&c. &c., &c.

Warrant granting Armorial Bearings for the Provinces of Ontario, Quebec, Nova Scotia, New Brunswick, and a Great Seal for the Dominion of Canada.

VICTORIA R.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c.

To our right trusty and well-beloved Councillor, Edward George Fitzalan Howard, (commonly called Lord Edward George Fitzalan Howard,) Deputy to our right trusty and right entirely beloved Cousin, Henry, Duke of Norfolk, Earl Marshal, and our Hereditary Marshal of England,

GREETING :

WHEREAS, by virtue of and under the authority of an Act of Parliament, passed in the twenty-ninth year of Our Reign, entitled "An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof," We were empowered to declare, after a certain day therein appointed, that the said Provinces of Canada, Nova Scotia, and New Brunswick, should form one Dominion, under the name of Canada; and it was provided that on and after the day so appointed, Canada should be divided into four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick; that the part of the then Province of Canada which formerly constituted the Province of Upper Canada, should constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada, should constitute the Province of Quebec; and that the Provinces of Nova Scotia and New Brunswick, should have the same limits as at the passing of the said Act. And, whereas, we did by our Royal Proclamation, bearing date the twenty-second day May last, declare, ordain, and command, that on and after the first day of July, 1867, the said Provinces should form and be one Dominion, under the name of Canada accordingly.

And forasmuch as it is our Royal Will and Pleasure that for the greater honour and distinction of the said Provinces certain armorial ensigns should be assigned to them;

Know ye, therefore, that We, of Our Princely Grace and special favour, have granted and assigned, and by these presents do grant and assign the armorial ensigns following, that is to say:—

For the Province of Ontario:—Vert a sprig of three leaves of maple slipped or, on a chief argent the cross of St. George.

For the Province of Quebec:—Or on a fess gules between two fleur-de-lis in chiêf azure and a sprig of three leaves of maple slipped vert in base a lion passant guardant or.

For the Province of Nova Scotia:—Or on a fess navy azure between three thistles proper a salmon naiant argent.

For the Province of New Brunswick:—Or on waves a lymphad, or ancient galley with oars in action proper on a chiêf gules, a lion passant guardant, or, as the same are severally depicted in the margin hereof, to be borne for the said respective Provinces on seals, shields, banners, flags or otherwise according to the laws of arms.

And we are further pleased to declare that the said United Provinces of Canada being one Dominion under the name of Canada, shall upon all occasions that may be required, use a common seal to be called the "Great Seal of Canada," which said seal shall be composed of the arms of the said four Provinces quarterly, all which Armorial Bearings are set forth in this our Royal Warrant. Our will and pleasure, therefore, is that you, Edward George Fitzalan Howard (commonly called Lord Edward George Fitzalan Howard), Deputy to our said Earl Marshal, to whom the cognizance of matters of this nature doth properly belong, do require and command that this our Concession and Declaration be recorded in our College of Arms in order that our officers of arms and all other public functionaries whom it may concern, may take

full notice and knowledge thereof, in their several and respective departments; and for so doing, this shall be your Warrant. Given at our Court at St. James this twenty-sixth day of May, in the thirty-first year of Our Reign.

By Her Majesty's Command,
(Signed) BUCKINGHAM & CHANDOS.

I, Albert William Woods, of the College of Arms, London; Lancaster, Herald and Registrar of the said College, do hereby certify and declare that the foregoing is a true and faithful copy of the original Warrant, and that the same has been examined with the record thereof in the books of the College of Arms, by me this twenty-first day of September, 1868.

(Signed) ALBERT W. WOODS,
Lancaster and Registrar.

Lord Monck to the Duke of Buckingham and Chandos.

(No. 202.)

QUEBEC, 10th November, 1868.

MY LORD DUKE,—Referring to Your Grace's despatch of 14th October, marked separate, and the accompanying Royal Warrant granting armorial bearings to the Dominion of Canada and the several Provinces, and designating the "Great Seal" of the Dominion, I have the honour to state that I have abstained from publishing in the *Gazette* the Royal Warrant until a "Great Seal" in accordance with its requirements shall have been prepared, as I am advised that the publication of the warrant might render invalid documents issued under the "Great Seal" of the Dominion at present in use.

I have, &c.,
(Signed) MONCK.

His Grace the DUKE of
BUCKINGHAM and CHANDOS.

(Canada—No. 234.)

DOWNING STREET, 9th December, 1868.

SIR,—With reference to Viscount Monck's despatch, No. 202, of the 10th of November last, I have the honour to transmit to you a copy of a letter from the chief engravers of Her Majesty's seals, intimating that the five seals which are now in the course of engraving, to be used in the Dominion of Canada, are in a very forward state, and that they will lose no time in completing them.

I have, &c.,
(Signed) BUCKINGHAM & CHANDOS.

The Right Honourable
Sir JOHN YOUNG, Bart., G.C.B., G.C.M.G., &c. &c.

Messrs. Wyon to Sir Frederic Rogers.

287 REGENT STREET, 3rd December, 1868.

SIR,—We beg to acknowledge the receipt of your letter of the 2nd inst., and to state in reply, for the information of His Grace the Duke of Buckingham and Chandos, that immediately upon the receipt of your letter of the 19th August last, enclosing Her Majesty's warrant, ordering us to engrave five seals to be used in the Dominion of Canada, we proceeded to execute the same with all possible despatch. The seals are now in a very forward state; and we will continue to lose no time in completing them, which we hope to do shortly.

We are, &c.,
(Signed) J. L. & A. B. WYON,
Chief Engravers of Her Majesty's Seals.

Sir FREDERIC ROGERS, Bart., &c., &c.,

(Canada—No. 17.)

DOWNING STREET, 16th January, 1869.

SIR,—With reference to my predecessor's despatch, No. 234, of the 9th ultimo, I transmit to you for your information, a copy of a further letter from Messrs Wyon, intimating that the Great Seal for the Dominion of Canada is expected to be completed in the course of the month of February. It will then be submitted at the next Council for Her Majesty's final approval.

I have, &c.,

(Signed)

GRANVILLE.

Governor General,
The Right Honourable
Sir J. YOUNG, G.C.B., G.C.M.G.,
&c., &c.

Messrs. Wyon to Sir Frederic Rogers.

287 REGENT STREET W., 29th December, 1868.

SIR,—In reply to your letter of the 24th inst., we beg to state that we expect to complete the Great Seal for the Dominion of Canada some time in February next.

The design being of a very elaborate character, we find it takes a longer time to execute than we anticipated, but we are proceeding with it with all possible despatch.

We have, &c.,

(Signed)

J. P. & A. B. WYON.

Sir FREDERIC ROGERS, Bt.,
&c., &c.

(Canada—No. 23.)

DOWNING STREET, 8th May, 1869.

SIR,—With reference to previous correspondence, and especially to my despatch No. 17, of the 16th January last, I have the honour to transmit to you five Seals, for the Dominion of Canada, and the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick respectively.

I also transmit to you the Queen's Warrant under the Royal Sign Manual and Signet, authorizing and directing that the said Seals shall respectively be used for the sealing of all things whatsoever which shall pass the Great Seal of the Dominion of Canada and the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, and requiring you to return the old Seals for the General Government of Canada and the Provincial Governments of Ontario, Quebec, Nova Scotia and New Brunswick, in order to their being defaced by Her Majesty in Her Privy Council.

I have the honour to be, Sir,

Your most obedient, humble servant,

(Signed)

GRANVILLE.

Governor General,
The Right Honourable
Sir JOHN YOUNG, Bart., G.C.B., G.C.M.G.
&c., &c.

Warrant authorizing the use of Seals prepared for the Dominion of Canada and Provinces of Ontario, Quebec, Nova Scotia and New Brunswick.

[L.S.]

VICTORIA R.

To our right trusty, and well-beloved Councillor, Sir John Young, Barone, Knight Grand Cross of Our Most Honourable Order of the Bath, Knight Grand Cross of Our Most Distinguished Order of St. Michael and Saint George, our Governor-General of Canada, or in his absence, to our Lieutenant-Governor or the officer administering the Government of our Dominion of Canada for the time being, Greeting:

With this you will receive five Seals prepared by Our Order for the use of Our Dominion of Canada and Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick respectively. Our Will and Pleasure is, and we do hereby authorize and direct that the said Seals shall be respectively used for the sealing of all things whatsoever which shall pass the Great Seals of Our said Dominion of Canada and Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, and for Our Service in our said Dominion and Provinces. We do further require and command you that you do return the old Seals for the General Government of Canada and the Provincial Governments of Ontario, Quebec, Nova Scotia and New Brunswick to us through one of our principal Secretaries of State in order to their being defaced in like manner with other seals by Us in Our Privy Council, and so We bid you farewell.

Given at Our Court at Osborne House, Isle of Wight, this seventeenth day of May 1869, in the thirty-second year of Our Reign.

By Her Majesty's command.

(Signed) GRANVILLE.

No. 72.)

The Governor General to the Secretary of State for the Colonies.

OTTAWA, 2nd July, 1869.

MY LORD,—I have the honour to enclose a memorandum furnished by the Honourable the Minister of Justice, the Prime Minister, on the subject of a Great Seal for the Dominion of Canada and of Great Seals for the four Provinces of which the Dominion is composed.

Her Majesty's Warrant, issued from the College of Arms on the 21st September, 1868, grants Armorial Bearings to the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, but makes mention of a Great Seal only for the Dominion of Canada.

Under these circumstances stated in the Minister of Justice's memorandum, I beg leave to be furnished with your Lordship's instructions for my guidance in respect to the four Provincial Seals.

I have, &c.,

(Signed) JOHN YOUNG.

The Right Honourable

The EARL GRANVILLE, K.G.,

&c., &c., &c.

DEPARTMENT OF JUSTICE,

OTTAWA, 25th June, 1869.

The undersigned has the honour to call your Excellency's attention to the several despatches from the Colonial Office on the subject of a Great Seal for the Dominion of Canada, and of Great Seals for the four Provinces of which it is composed.

With a despatch from the Duke of Buckingham dated 1st June, 1867, three seals for the Dominion of Canada and the Provinces of Ontario and Quebec respectively, were transmitted to the Governor General. At the same time there was sent the Queen's Warrant ordering that the Seals should be used for the sealing of all things whatever which should pass the Great Seal of the Dominion, or of either of the said Provinces, and the Governor General was informed that it was intended to substitute for those Seals thereafter, others of a different and more elaborate design.

In a subsequent Despatch of 14th October, 1868, His Grace transmitted a certified copy of Her Majesty's Warrant of assignment of Armorial Bearings for the Dominion and the four Provinces of Canada, and the Governor General was requested to take such steps as might be necessary for carrying Her Majesty's wishes into effect.

This Warrant conferred Armorial Bearings on the Dominion, and on each of the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, and provided further that Canada should have a Great Seal, which Seal should be composed of the Arms of the said four Provinces quarterly.

As this despatch and Warrant were not accompanied by a Great Seal according to the Warrant, Lord Monk in a despatch bearing date informed the Colonial Secretary that he could not publish the Warrant officially as on the issue of the proclamation the Seal previously transmitted to His Lordship would cease to be the Great Seal of Canada.

His Grace replied on the _____ informing His Lordship that the new Seal was in progress, and would be transmitted as soon as completed.

It will be observed that the Warrant, while it provides for a Great Seal for the Dominion, is silent as to Seals for the Provinces and merely gives them Armorial Bearings.

With the last despatch received from the Colonial Office on the subject from Earl Granville, bearing date 8th May last, five Seals for the Dominion of Canada and for the four Provinces respectively were transmitted, and they were accompanied by a Warrant from Her Majesty to Your Excellency ordering those seals to be used in the sealing of all things which should pass the Great Seal of the Dominion and the Provinces respectively, and Your Excellency was commanded thereby to return the old Seals in order to their being defaced.

There can be no doubt that Her Majesty has the sole power to order and to change at will the Great Seal of the Dominion. A question, however, arises, whether, under the British North America Act, 1867, and under the altered position of the Provinces caused by that Act, the power to fix the Great Seals for those Provinces does not rest elsewhere.

Instead of being separated Colonies they are now portions of the Dominion. Their Lieutenants-Governors are no longer appointed by Her Majesty but by the Governor General in Council, and in the absence of any express provision in the Act, it might be argued that their Great Seals should be appointed and altered by the Governor General in the same manner as Her Majesty orders the Great Seal for the Dominion.

It is, however, expressly provided by the 136th clause of the Act, that until altered by the Lieutenant-Governor in Council, the Great Seals of Ontario and Quebec, respectively, shall be the same, or of the same design as those used in the Provinces of Upper Canada and Lower Canada respectively, before their union, and the Province of Canada.

There is no mention in the Act of Great Seals for Nova Scotia and New Brunswick, but it would seem that if the Lieutenants-Governors of Ontario and Quebec have the sole right of altering the Great Seal of their respective Provinces at pleasure, that the same authority ought to be held to exist in the Governments of Nova Scotia and New Brunswick.

The undersigned, under the circumstances, begs leave to recommend that Your Excellency give effect at once to that portion of Her Majesty's Warrant which established the new Great Seal for the Dominion, but before taking further steps with respect to the Seals appointed for the Provinces, that additional instructions should be asked for.

All which is respectfully submitted.

(Signed)

JOHN A. MACDONALD.

(Canada—No. 169.)

The Secretary of State to the Governor General.

DOWNING STREET, 23rd August, 1869.

SIR,—I have the honour to acknowledge the receipt of your despatch, No. 72, of the 2nd July, enclosing a memorandum of the Hon. the Minister of Justice on the subject of the Great Seal for the Dominion, and of the Seals for the four Provinces of which the Dominion is composed.

No question has been raised with respect to the Great Seal of the Dominion, and, in truth, there can be no doubt that Her Majesty has the sole power to order and to change at will that Great Seal.

Nor do I entertain any doubt that in Her Majesty alone is vested a like power with respect to the Great Seals of the Provinces of New Brunswick and Nova Scotia; the Imperial Act is silent as to these seals, and the power existing in Her Majesty at the time of the passing of the Act cannot, I apprehend, be considered to have been taken away by any implication arising from the 136th section, which is in terms expressly confined to the Provinces of Ontario and Quebec.

With respect to the Great Seals for these latter Provinces, the provisions of the 136th section appear to have escaped observation till quite recently, but I am clearly of opinion that the proper mode of introducing the new seals into those Provinces will be by proclamation or order of the respective Lieutenant-Governors under the powers vested in them by that section. I presume that there will be no difficulty in taking this course.

These observations appear to me to dispose of the questions arising upon the recent Warrant of the 7th May.

For the future, however, it will probably be convenient that the four Provinces should be on the same footing with respect to their Great Seals; and that if the Lieutenant-Governors of the Provinces of Ontario and Quebec have the sole right of altering the Seals of those Provinces, at pleasure, the same right should be vested in the Lieutenant-Governors of New Brunswick and Nova Scotia.

A doubt also may be raised upon the construction of the 136th section, whether the power of altering the Great Seals of Ontario and Quebec will cease after it has once been exercised, or whether it may afterwards be exercised from time to time.

On these grounds, and because I cannot doubt that it was intended to vest the power of altering the Seals in the Lieutenant-Governors of those Provinces, I see no reason, as at present advised, why the power from time to time to alter the Great Seals of all the Provinces should not be vested in the respective Lieutenant-Governors.

I should be glad, however, to be favored with the views of yourself and your responsible Ministers upon this point.

If they desire this power to be vested in the Lieutenant-Governors, the question will arise whether this can be done by local legislation or will require an Act of the Imperial Parliament.

Upon this question I am advised that the assent of the Crown being first obtained, local Acts afterwards assented to by the Crown would be a legal mode of empowering

this alteration to be made in those Provinces where it is not at present legal. But that it might be a shorter and more convenient mode of affecting the same object to pass an Imperial Act.

I have, &c.,

Signed) GRANVILLE.

Governor General,
The Right Honourable
Sir JOHN YOUNG, Bt., G.C.B., G.C.M.G.

COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 16th November, 1869.

The Committee have had under consideration the annexed memorandum, dated 13th November, 1869, from the Hon. the Minister of Justice, on certain correspondence had with Her Majesty's Imperial Government respecting the appointing and altering of the Great Seals for the Provinces of the Dominion, and they humbly advise that the recommendations submitted in the said annexed memorandum be approved and carried out.

Certified.

(Signed) WM. H. LEE,
Clerk Privy Council.

To the Honorable
The Secretary of State,
for Provinces, &c., &c., &c.

DEPARTMENT OF JUSTICE,

OTTAWA, November 13th, 1869.

The undersigned has the honour to report to your Excellency that by Her Majesty's Warrant, bearing date the 26th day of May, 1868, Armorial Bearings for the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick were granted, and a Great Seal appointed for the Dominion of Canada, to be composed of the said arms of the said four Provinces quarterly;

That no Great Seal was transmitted with such Warrant;

That with another Warrant of Her Majesty, bearing date the 7th day of May, 1869, five seals were transmitted, which are stated in such Warrant to be for the use of the Dominion of Canada and the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick respectively; and by such Warrant Her Majesty authorized and directed that the said Seals should be respectively used for the sealing of all things whatsoever which shall pass the Great Seals of the said Dominion and of the said Provinces.

That the said Warrants were referred to the undersigned for report, and that he, on the 25th day of June, last, in his report to Your Excellency, called your attention to the subject in the following words:—

“There can be no doubt that Her Majesty has the sole power to order and to change, at will, the Great Seal of the Dominion. A question, however, arises, whether, under the British North America Act, 1867, and under the altered position of the Provinces caused by that Act, the power to fix the Great Seals for those Provinces does not rest elsewhere.

“Instead of being separate colonies, they are now portions of the Dominion. Their Lieutenant-Governors are no longer appointed by Her Majesty, but by the

Governor General in Council, and in the absence of any express provision in the Act, it might be argued that their Great Seals should be appointed and altered by the Governor General, in the same manner as Her Majesty orders the Great Seal for the Dominion.

"It is, however, expressly provided by the 136th clause of the Act, that until altered by the Lieutenant-Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same design as those used in the Provinces of Upper Canada and Lower Canada respectively, before their Union as the Province of Canada.

"There is no mention in the Acts of Great Seals for Nova Scotia and New Brunswick, but it would seem that if the Lieutenant-Governors of Ontario and Quebec have the sole right of altering the Great Seal of their respective Provinces at pleasure, that the same authority ought to be held to exist in the Governments of Nova Scotia and New Brunswick."

And the undersigned recommended that, before taking any steps with respect to the Seals appoointed for the Provinces, Your Excellency should ask for further instructions.

This report having been transmitted by Your Excellency to the Secretary of State for the Colonies, a despatch dated 23rd August last was received, stating his opinion that in Her Majesty was vested the power of ordering a Great Seal for the Provinces of Nova Scotia and New Brunswick.

The Colonial Secretary further states with respect to the Great Seals for Ontario and Quebec, that the provisions of the 136th section appeared to have escaped observation, but that in his opinion the proper mode of introducing the New Seals into those Provinces will be by proclamation or order of the respective Lieutenant-Governors under the powers vested in them by that section.

He also states that for the future it will probably be convenient that the four Provinces should be on the same footing with respect to the Great Seals, and that if the Lieutenant Governors of the Provinces of Ontario and Quebec have the sole right of altering the seals of those Provinces at pleasure, the same right should be invested in the Lieutenant-Governors of Nova Scotia and New Brunswick, and suggests that provision might be made either by local legislation or by an Act of the Imperial Parliament.

The undersigned has now the honour to recommend:

First,—That your Excellency do, under the authority of the Warrant of the 7th May, 1869, at once order that the Great Seal transmitted therewith be hereafter used as the Great Seal of the Dominion of Canada, and that the old Seal be returned according to such Warrant.

Secondly,—That the Great Seals for the Provinces of Nova Scotia and New Brunswick be transmitted to the Lieutenant-Governors of those Provinces, with copies of the correspondence with the Colonial Office respecting the same; and that they be instructed to carry out Her Majesty's pleasure by adopting the transmitted Seals as the Seals of their respective Provinces.

Thirdly,—That the Great Seals of the Provinces of Ontario and Quebec be also transmitted to the Lieutenant-Governors of those Provinces, with copies of the correspondence, so that those Provincial Governments may have the opportunity of adopting such Seals, should they think proper to do so.

Fourthly,—That copies of Her Majesty's Warrant, granting Armorial Bearings to the four Provinces, be also transmitted to the respective Lieutenant-Governors.

All which is respectfully submitted.

(Signed) JOHN A. MACDONALD.

OTTAWA, 20th November, 1869.

Received this day, from the Under-Secretary of State for the Provinces, the Great Seal of the Province of Nova Scotia, to be delivered to the Lieutenant-Governor of that Province.

(Signed) EDWARD KENNY.

OFFICE OF THE SECRETARY OF STATE FOR THE PROVINCES,

24th November, 1869.

SIR,—I have the honour to transmit to you herewith, copies of certain correspondence had with Her Majesty's Imperial Government respecting the appointing and altering of the Great Seal for the several Provinces of the Dominion.

2. I have at the same time to send you a copy of Her Majesty's Warrant granting Armorial Bearings to the several Provinces aforesaid.

3. The Great Seal appointed for the Province of Nova Scotia will be forwarded to you on the first fitting opportunity that presents itself.

4. Upon the delivery into your hands of the Great Seal, you will have the goodness to take measures to carry out Her Majesty's pleasure, as indicated in the accompanying correspondence, by adopting the said Seal as the Great Seal of the Province of Nova Scotia. You will also be pleased to transmit to me the old Seal of the Province of Nova Scotia, with a view to its being returned by His Excellency to Her Majesty for the purpose of being defaced.

I have the honour to be, Sir,
Your obedient servant,

(Signed) J. HOWE.

Major-General Sir HASTINGS DOYLE, G.C.M.G.,
Lieutenant-Governor,
Halifax, N. S.

(No. 38.)

GOVERNMENT HOUSE,
HALIFAX, NOVA SCOTIA,
7th December, 1869.

SIR,—I have the honour to acknowledge the receipt of your despatch No. 1,577, of the 24th ultimo, containing copies of correspondence concerning the Seals for the Provinces of British North America. I have also received, at the hands of the Honourable the President of the Privy Council, the new Seal of the Province of Nova Scotia.

I shall take the first available opportunity of transmitting the old Seal to His Excellency the Governor-General, in order that it may be returned to the Secretary of State for the Colonies.

I have the honour to be, Sir,
Your obedient servant,

(Signed) HASTINGS DOYLE.

The Honourable
The Secretary of State for the Provinces.

(No. 8.)

GOVERNMENT HOUSE,

HALIFAX, 7th February, 1870.

SIR,—Referring to your despatch No. 1,577, of the 24th November, transmitting to me the Seal which Her Majesty had been pleased to direct should be used as the Great Seal of the Province of Nova Scotia, and in which also copies were enclosed of a correspondence between the Imperial and Dominion Governments concerning the power of altering the Seals of the several Provinces of the Dominion, I have the honour to enclose a copy of a Minute of my Executive Council, deprecating any alteration being made in the Seal heretofore in use in this Province.

I have to request that this document may be brought to the notice of His Excellency the Governor General, in order that the same may, if His Excellency sees fit, be transmitted to Her Majesty's Secretary of State for the Colonies.

I have the honour to be, Sir,
Your obedient servant,

(Signed) HASTINGS DOYLE.

The Honourable
The Secretary of State for the Province,
&c., &c., &c.

COPY of a Minute of Council, passed the 2nd day of February, 1870.

The Lieutenant-Governor submits a communication from the Secretary of State for the Provinces, transmitting for the consideration of the Council a despatch from Earl Granville, the principal Secretary of State for the Colonies, on the subject of altering the Great Seal of the Province of Nova Scotia.

It appears from the despatch of Earl Granville that the anomalous position in which Nova Scotia is placed in regard to the Seal of the Province, by the Imperial Act confederating the four Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, has not escaped the attention of Her Majesty's Government. The British North America Act recognizes the right of the Governor in Council, both in Ontario and Quebec, to alter the Seals of those Provinces, and Earl Granville distinctly states that it is proposed, by Imperial statute or otherwise, to extend the same power to the Provinces of Nova Scotia and New Brunswick.

The Council, while freely recognizing the right of Her Majesty the Queen to change and alter the Great Seal of the Province at pleasure, respectfully submit that as the people are warmly attached to the Seal which for a long period of time was used in sealing all Provincial documents under their old and highly-valued constitution, the Government be permitted to retain the old Seal, instead of adopting the new one, a course which will obviate the necessity of either Imperial or Local legislation on the subject.

Certified.

(Signed) W. B. VAIL,
Clerk of Council.

The Honourable
The Secretary of State for the Provinces.

OFFICE OF THE SECRETARY OF STATE FOR THE PROVINCES.

14th February, 1870.

SIR,—I have the honour to acknowledge the receipt of your letter of the 7th inst., covering a certified copy of a minute of your Executive Council, deprecating any alteration being made in the Seal heretofore in use in the Province of Nova Scotia.

Your letter and its enclosure will, as you request, be brought under the notice of His Excellency the Governor General with a view to their being transmitted by him, should he see fit, to the Secretary of State for the colonies.

I have the honour to be, Sir,
Your obedient servant,

(Signed) J. HOWE.

Lieut.-General,
Sir HASTINGS DOYLE,
R.C.M.G., Halifax, N.S.

SUPPLEMENTARY RETURN

To AN ADDRESS of the HOUSE OF COMMONS, dated 12th March, 1877;—For copies of all correspondence between the Imperial Government and the Dominion Government, and between the Dominion Government and the Provincial Government of Nova Scotia, relating to the Great Seal of the Province that has been affixed to all documents requiring the same since Confederation.

By Command,

(Signed)

R. W. SCOTT,

Secretary of State.

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 13th April, 1877.

Telegram from Hon P. C. Hill to Hon. W. B. Vail, 17th March, 1877.

"Referring to Lord Granville's despatch of 25th August, 1869, he suggests that assent of Crown being first obtained, Local Acts afterwards assented to by Crown would be a legal mode of empowering alterations in Great Seals. If Dominion Government will telegraph Colonial Minister for telegram recognizing use of old Seal since 1869, and conveying assent of Crown to a Local Act we could pass it this session and settle the whole difficulty. Please get this done, if by any possibility it can; of utmost importance to us. Answer telegraph."

(Copy of telegram.)

The Earl of Dufferin to the Earl of Carnarvon.

9th March, 1877.

The Nova Scotia Government, pursuant to Lord Granville's despatch of August 25th, 1869, request Crown's recognition of use of old Seal and assent to Local Bill legalizing use of Seal and vesting power in the Lieutenant-Governor in future.

Although assent perhaps unnecessary, hope you will agree by cable; case urgent.

(Copy of Cable Message.)

13th March, 1877.

The Crown assents, pursuant to Lord Granville's despatch, to introduction of Bill empowering the Lieutenant Governor to alter Seal, but the further request that the Crown should recognize and localize Bill legalizing the past use of the old Seal is new, and will I take advice on the subject. This I will do immediately, and as soon as possible reply further. Of course anything necessary to be done, which can be done here, will be done.

(Signed) CARNARVON.

To Governor General.

Telegram from the Secretary of State to Lieutenant-Governor of Nova Scotia.

14th March, 1877.

"Confidential. Upon telegram of 9th March, from Mr. Hill, your Minister, to Mr. Vail, Colonial Secretary, was asked for assent of Crown pursuant to Lord Granville's despatch, August, '69, to local Bill vesting power, with reference to Seal, in Lieutenant-Governor in future, and also for Crown's assent to local Bill legalizing use of Great Seal; and also for Crown's recognition of use of old Seal; Colonial Secretary cables Crown's assent pursuant to Lord Granville's despatch to introduction of Bill, empowering Lieutenant-Governor to alter Seal. Further requests are under consideration."

GOVERNMENT HOUSE,
HALIFAX, N.S., 28th March, 1877.

SIR,—I have the honour to bring to your notice, for the information of His Excellency the Governor General, certain circumstances in connection with the Great Seal of this Province, which at the present time are attracting much attention in the Legislature and in the press, and in reference to which I feel it my duty to furnish His Excellency with some detailed information.

By a Statute of this Province, passed in 1874, power was given to the Lieutenant-Governor in Council to regulate the precedence of the Bar by instruments passed under the Great Seal.

By virtue of the provisions of this Statute, a Patent had issued giving precedence to certain members of the Bar. The validity of this Patent was lately called in question in the Supreme Court, at Halifax, in a proceeding instituted by a member of the Bar who had been appointed Queen's Council before the date of the Act, and whose order of precedence was altered, unfavourably to him, by the Patent.

Among the other grounds taken in the argument, it was contended that the Document, though bearing what purported to be the Great Seal, did not really bear the Great Seal.

It appeared by affidavit that there were two Seals in existence, each purporting to be the Great Seal. The question to be decided was, which of these was the true Seal.

On the requisition of the Assembly, after the proceedings in Court had commenced, all the correspondence to be found at Government House on the subject of the Seals was laid on the table of the House. I send herewith a printed copy of these papers, marked A; they were subsequently brought to the notice of the Court and used in the argument.

On Monday last, the 26th instant, the Court gave judgment. The decision did not really turn on the validity of the Seal; the Court, with the exception of one of the Judges, holding that the Statute authorizing the Patent in question was not retrospective in its operation, and therefore did not affect the precedence acquired, before the passing of the Act, by the gentleman who had instituted the proceedings.

The Judges did not, however, confine themselves to this point. They took up the general question of the validity of the Seal.

The Chief Justice, Judges Desbarres, McDonald, Wilkins and James constituted the Court on this occasion; Judge Smith, who had been Attorney-General for a portion of the time after 1869, took no part.

I send you printed copies marked B of the judgment delivered by the Chief Justice, Judge Wilkins, and

By this decision, the Great Seal in use is by three out of five of the Judges declared to be illegal; the fourth giving a not very distinct judgment; the fifth only pronouncing broadly in its favour.

The judgment is, I understand, appealed to the Judicial Committee of the Privy Council. Final judgment, therefore, may not be reached for some time to come, and even then judgment may turn upon the point of the retrospective operation of the Statute. In that case, the question of the Seal would be left untouched.

It is obvious, therefore, that for a considerable period, the minds of the people of this Province cannot fail to be agitated by some doubts and fears as to the validity of recent Legislative and Executive Acts.

My Government have naturally looked round to find a way out of a situation surrounded by grave difficulties. The first solution which would suggest itself in such a case would be to adopt the new Seal, convene an Assembly under it, and with the assent of the Crown, pass an Act to confirm the proceedings taken under the old Seal.

But this course seems to my Government open to two objections. First, the judgment of the Court is appealed from, and the case is therefore still *subjudice*. They think it possible that the opinion of the majority of the Court may not be upheld on appeal. In this case, the old Seal being established, the new Assembly and its Acts, and all the documents to which the new Seal is attached, would, they think, be open to the same questions which apply to the old Seal now.

But, secondly, the Appeal Court may and probably would decide nothing more than what is necessary to determine the application before it, and if it should be of opinion that the operation of the Act is not retrospective, may go no further.

This would leave the main point in controversy subject to all the doubts which now obtain.

The only other course that to my Government seemed open was to invite the aid of the Imperial Parliament.

The Dominion Legislature has clearly no power to rectify the mistake. The Imperial Parliament has theoretically supreme jurisdiction, and the Union Act itself, being based on that assumption, it seems to my Ministers that the earliest solution of their difficulties was to be sought in the direction of an Act of Parliament.

Our helplessness to correct the mischief in question without considerable delay, during which further mischief would arise, is, it seems to my Government, ground sufficient to justify them in inviting, and the Imperial Parliament in granting, an interposition, which, in ordinary cases, would be quite undesirable.

The gentlemen returned at the elections, whether or not they can be considered technically members of Assembly, are, they think, undoubtedly representatives of the people in every other sense.

They were returned without any knowledge as to what Seal was attached to the election writs, and would have been returned all the same whether the Seal were right or wrong. As such representatives, therefore, they can express the well-understood wishes of the people, and my Government propose to ask the Assembly to pass an address to Her Majesty, of which I enclose you a copy marked C, and an address to His Excellency the Governor General asking him to transmit the same to the Queen to be laid at the foot of the Throne.

I shall be glad to be informed whether the course proposed by my Ministers meets the approval of the Government at Ottawa; and in any case, I should like to receive any suggestion the Government may choose to offer upon the subject of the Seal, or upon the course I should officially pursue in the complications in which this question is involved.

I have the honour to be, Sir,
Your obedient servant,

(Signed) ADAMS J. ARCHIBALD,
Lieutenant-Governor.

P.S.—The address enclosed having been prepared before judgment was given in the Supreme Court, will, of course, require to be slightly modified to meet the existing situation.

A. J. A.

The Hon. the Secretary of State, Ottawa.

GREAT SEAL.

MINUTE OF COUNCIL PASSED 2ND FEBRUARY, 1870.

(Copy.) A.

“The Lieutenant-Governor submits a communication from the Secretary of State for the Provinces, transmitting, for the consideration of the Council, a Despatch from Earl Granville, the Principal Secretary of State for the Colonies, on the subject of altering the Great Seal of the Province of Nova Scotia.

“It appears from the despatch of Earl Granville that the anomalous position in which Nova Scotia is placed in regard to the Seal of the Province by the Imperial Act confederating the four Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, has not escaped the attention of Her Majesty's Government.

“The British North America Act recognizes the right of the Governor in Council, both in Ontario and Quebec, to alter the Seal of those Provinces; and Earl Granville distinctly states that it is proposed, by Imperial Statute or otherwise, to extend the same power to the Provinces of Nova Scotia and New Brunswick.

“The Council, while freely recognizing the right of Her Majesty the Queen to change and alter the Great Seal of the Province at pleasure, respectfully submit that,

as the people are warmly attached to the Seal which for a long period of time was used in sealing all Provincial documents under their old and highly valued constitution, the Government be permitted to retain the old Seal instead of adopting the new one, a course which will obviate the necessity of either Imperial or Local Legislation on the subject."

Confirmed,

(Signed)

HASTINGS DOYLE,
Lieutenant-Governor.

(Copy.)

The Secretary of State for the Provinces to the Lieutenant-Governor.

OTTAWA, 24th November, 1869.

SIR,—I have the honour to transmit to you herewith copies of certain correspondence with Her Majesty's Imperial Government respecting the appointing and altering of the Great Seals of the several Provinces of the Dominion.

2. I have, at the same time, to send you a copy of Her Majesty's Warrant granting Armorial Bearings to the several Provinces aforesaid.

3. The Great Seal appointed for the Province of Nova Scotia will be forwarded to you on the first fitting opportunity that presents itself.

4. Upon the delivery into your hands of the Great Seal, you will have the goodness to take measures to carry out Her Majesty's pleasure, as indicated in the accompanying correspondence, by adopting the said Seal as the Great Seal of the Province of Nova Scotia. You will also be pleased to transmit to me the old Seal of the Province of Nova Scotia with a view to its being returned to Her Majesty for the purpose of being defaced.

I have, &c., &c.,

(Signed)

JOSEPH HOWE,
Secretary of State, &c., &c.

Major-General

Sir HASTINGS DOYLE, K.C.M.G., &c., &c.

The Secretary of State for the Colonies to the Governor General.

DOWNING STREET, 14th October, 1868.

MY LORD,—I have the honour to enclose a certified copy of Her Majesty's Warrant of Assignment, of Armorial Bearings, for the Dominion and Provinces of Canada, which has been duly enrolled in Her Majesty's College of Arms, and I have to request that your Lordship will take such steps as may be necessary for carrying Her Majesty's gracious intention into effect.

I have, &c.,

(Signed)

BUCKINGHAM & CHANDOS.

VICTORIA R.

VICTORIA by the Grace of God, &c., &c.

To Our Right, Trusty and Well-Beloved Councillor Edward George Fitzalan Howard (commonly called Lord Edward George Fitzalan Howard,) Deputy, &c.,
GREETING :

* * * AND WHEREAS, We did by our Royal Proclamation, bearing date the 22nd day of May last, declare, ordain and command, that on and after the first day of July, 1867, the said Provinces should form one Dominion under the name of Canada accordingly, and forasmuch as it is our Royal will and pleasure that for the greater honor and distinction of the said Provinces, certain Armorial Ensigns should be assigned to them ;

KNOW YE THEREFORE, That we of our princely grace and special favor have granted and assigned, and by these presents do grant and assign, the Armorial Ensigns following, that is to say :

For the Province of Ontario—Vert, &c., &c.

For the Province of Quebec—Or, &c., &c.

For the Province of Nova Scotia—Or on a Fess Wavy Azure between three Thistles proper, a Salmon Naïant Argent.

For the Province of New Brunswick—Or, &c., &c.

As the same are severally depicted on the margin hereof, to be borne for the said respective Provinces, on Seals, Shields, Banners, Flags, or otherwise, according to the laws of Arms. And we are further pleased to declare that the said united Provinces of Canada being one Dominion under the name of Canada, shall, upon all occasions that may be required, use a common seal, to be called the "Great Seal of Canada," which said seal shall be composed of the arms of the said four Provinces quartered, all which armorial bearings are set forth in this our Royal Warrant. Our will and pleasure, therefore, is that you, Edward George Fitzalan Howard, Deputy, &c., to whom the cognizance of matters of this nature doth properly belong, do require and command that this our concession and declaration be recorded in our College of Arms, in order that our officers of Arms and all other public functionaries whom it may concern may take full notice and knowledge thereof in their several and respective departments. And for so doing this shall be your warrant.

Given at our Court, at St. James, this 26th day of May, in the 31st year of our reign.

By Her Majesty's command.

(Signed) BUCKINGHAM & CHANDOS.

There was also another despatch dated—

DOWNING STREET,

8th May, 1869.

SIR,—With reference to previous correspondence, especially to my despatch No. 17, of the 16th January, I have the honor to transmit to you five seals for the Dominion of Canada and the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, respectively.

I also transmit to you the Queen's warrant, under the Royal sign-manuel and signet, authorizing and directing that the said seals shall respectively be used for sealing of all things whatsoever which shall pass the Great Seal of the Dominion of Canada and the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, and requiring you to return the old seals for the General Government of Canada and the

Provincial Governments of Ontario, Quebec, Nova Scotia and New Brunswick, in order to their being defaced by Her Majesty in Her Privy Council.

I have the honor, &c.,

(Signed) GRANVILLE.

Governor-General

Rt. Hon. Sir JOHN YOUNG, &c., &c.

This was accompanied by a warrant dated 1st May, 1869.

VICTORIA R.

(L. s.)

(Copy.)

To our Right, Trusty and Well-Beloved Councillor Sir John Young, &c., &c., GREETING:

With this you will receive five Seals prepared by our order for the use of our Dominion of Canada and Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, respectively. Our will and pleasure is, and we do hereby authorize and direct, that the said seals shall respectively be used for the sealing of all things whatsoever which shall pass the Great Seals of our said Dominion of Canada and Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, and for our service in our said Dominion and Provinces. We do further require and command you that you do return the old seals for the General Government of Canada and the Provincial Governments of Ontario, Quebec, Nova Scotia and New Brunswick, to us through one of our principal Secretaries of State, in order to their being defaced in like manner with other seals by us in our Privy Council. And so we bid you farewell.

Given at our Court at Osborne House, Isle of Wight, this 1st day of May, 1869, in the 32nd year of our reign.

By Her Majesty's command.

(Signed) GRANVILLE.

The Governor General to the Secretary of State for the Colonies.

OTTAWA, 2nd July, 1869.

(Copy.)

MY LORD,—I have the honour to enclose a memorandum furnished by the Hon. the Minister of Justice, the Prime Minister, on the subject of a Great Seal for the Dominion of Canada, and of Great Seals for the four Provinces of which the Dominion is composed.

Her Majesty's Warrant, issued from the College of Arms on the 21st September, 1868, grants Armorial Bearings to the Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, but makes mention of a Great Seal *only for the Dominion of Canada*.

Under these circumstances, stated in the Minister of Justice's memorandum, I beg to be furnished with Your Lordship's instructions for my guidance in respect to the four Provincial Seals.

I have, &c.,

(Signed) JOHN YOUNG.

The Right Honorable

The EARL GRANVILLE, K.G., &c., &c.

From the Minister of Justice to the Governor General.

DEPARTMENT OF JUSTICE,
OTTAWA, 25th June, 1869.

(Copy.)

The undersigned has the honour to call Your Excellency's attention to the several despatches from the Colonial Office on the subject of a Great Seal for the Dominion of Canada, and of Great Seals for the four Provinces of which it is composed.

With a despatch from the Duke of Buckingham, dated 1st June, 1867, three Seals for the Dominion of Canada and the Provinces of Ontario and Quebec respectively were transmitted to the Governor General at the same time there was sent the Queen's Warrant ordering that the Seals should be used for the sealing of all things whatever which should pass the Great Seal of the Dominion or of either of the said Provinces, and the Governor General was informed that it was intended to substitute for these Seals thereafter, others of a different and more elaborate design.

In a subsequent despatch of 14th October, 1868, His Grace transmitted a certified copy of Her Majesty's Warrant of Assignment of Armorial Bearings for the Dominion and the four Provinces of Canada, and the Governor General was requested to take such steps as might be necessary for carrying Her Majesty's wishes into effect.

This warrant conferred Armorial Bearings on the Dominion and on each of the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick; and provided further that Canada should have a Great Seal, which Seal should be composed of the Arms of the said four Provinces quarterly.

As this despatch and warrant were not accompanied by a Great Seal according to the warrant, Lord Monck informed the Colonial Secretary that he would not publish the warrant officially; as, on the issue of the proclamation, the Seal previously transmitted to His Lordship would cease to be the Great Seal of Canada.

His Grace replied, informing His Lordship that the new Seal was in progress and would be transmitted as soon as completed.

It will be observed that the warrant, while it provides for a Great Seal for the Dominion, is silent as to the Seals for the Provinces, and merely gives the Armorial Bearings.

With the last despatch received from the Colonial Office on the subject from Earl Granville, bearing date 8th May last, five Seals for the Dominion of Canada and for the four Provinces respectively were transmitted, and they were accompanied by a warrant from Her Majesty to Your Excellency, ordering these Seals to be used in the sealing of all things which should pass the Great Seal of the Dominion and of the Provinces respectively; and Your Excellency was commanded thereby to return the old Seals in order to their being defaced.

There can be no doubt that Her Majesty has the sole power to order and to change at will the Great Seal of *the Dominion*. A question, however, arises whether under the British North America Act, 1867, and under the altered position of the Provinces caused by that Act, the power to fix the Great Seals of those Provinces does not rest elsewhere. Instead of being separate Colonies they are now portions of the Dominion. Their Lieutenant Governors are no longer appointed by Her Majesty, but by the Governor General in Council, and in the absence of any express provision in the Act, it might be argued that their Great Seals should be appointed and altered by the Governor General in the same manner as Her Majesty orders the Great Seal for the Dominion.

It is, however, expressly provided by the 136th clause of the Act that, until altered by the Lieutenant Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same design, as those in the Provinces of Upper Canada and Lower Canada respectively, before their Union as the Provinces of Canada.

There is no mention in the Act of Great Seals for Nova Scotia and New Brunswick, but it would seem that if the Lieutenant-Governors of Ontario and Quebec have the sole right of altering the Great Seal of their respective Provinces at

pleasure, that the same authourity ought to be held to exist in the Governments of Nova Scotia and New Brunswick.

The undersigned, under the circumstances, begs to recommend that your Excellency give effect at once to that portion of Her Majesty's Warrant which establishes the new Great Seal for the Dominion, but before taking further steps with respect to the Seals appointed for the Provinces, that additional instruction should be asked for.

All of which is respectfully submitted.

The Secretary of State to the Governor General.

DOWNING STREET, 25th August, 1869.

(Copy.)

SIR,—I have the honour to acknowledge the receipt of your despatch of the 2nd July, enclosing a memorandum of the Honourable the Minister of Justice on the subject of the Great Seal of the Dominion, and the Seals of the four Provinces of which the Dominion is composed.

No question has been raised with respect to the Great Seal of the Dominion, and in truth there can be no doubt that Her Majesty has the sole power to alter and change at will that Great Seal.

Nor do I entertain any doubt that in Her Majesty alone is vested a like power with respect to the Great Seals of the Provinces of New Brunswick and Nova Scotia. The Imperial Act is silent as to these Seals, and the power existing in Her Majesty at the time of the passing of the Act cannot, I apprehend, be considered to have been taken away by any implication arising from the 136th Section, which is in terms expressly confirmed to the Provinces of Ontario and Quebec.

With respect to the Great Seals for these latter Provinces, the provisions of the 136th section appear to have escaped observation until quite recently; but I am clearly of opinion that the proper mode of introducing the new Seals into those Provinces will be by proclamation or order of the respective Lieutenant-Governors, under the powers vested in them by that section. I presume that there will be no difficulty in taking this course.

These observations appear to me to dispose of the questions arising from the recent Warrant of the 7th May.

For the future, however, it will probably be convenient that the four Provinces should be on the same footing with respect to their Great Seals; and that if the Lieutenant-Governors of the Provinces of Ontario and Quebec have the sole right of altering the Seals of those Provinces at pleasure, the same right should be vested in the Lieutenant-Governors of New Brunswick and Nova Scotia.

A doubt also may be raised upon the construction of the 136th section, whether the power of altering the Great Seals of Ontario and Quebec will cease after it has once been exercised, or whether it may afterwards be exercised from time to time.

On these grounds, and because I cannot doubt that it was intended to vest the power of altering the Seals in the Lieutenant-Governors of those Provinces, I see no reason, as at present advised, why the power, from time to time, to alter the Great Seals of all the Provinces should not be vested in the respective Lieutenant-Governors.

I should be glad, however, to be favoured with the views of yourself and your responsible Ministers upon this point.

If they desire this point to be vested in the Lieutenant-Governors, the question will arise whether this can be done by Local Legislation, or will require an Act of the Imperial Parliament.

Upon this question I am advised that the assent of the Crown being first obtained, Local Acts, afterwards assented to by the Crown, would be a legal mode of empow-

ering this alteration to be made in those Provinces where it is not at present legal, but that it might be a shorter and more convenient mode of affecting the same object to pass an Imperial Act.

I have, &c.,

(Signed) GRANVILLE.

Governor-General,
The Right Honourable
Sir JOHN YOUNG, Bt., G.C.B., G.C.M.G.

The Secretary of State for the Provinces to Sir Hastings Doyle.

OTTAWA, 14th February, 1870.

(Copy.)

SIR,—I have the honour to acknowledge the receipt of your letter of the 7th instant, covering a certified copy of a Minute of your Executive Council deprecating any alteration being made in the Seal heretofore in use in the Province of Nova Scotia.

Your letter and its enclosure will, as you request, be brought under the notice of His Excellency the Governor General, with a view to their being transmitted by him, should he see fit, to the Secretary of State for the Colonies.

I have, &c.,

(Signed) JOSEPH HOWE.

Lieutenant-General,
Sir HASTINGS DOYLE, K.C.M.G., Lieutenant-Governor,
Halifax.

(No. 38.)

GOVERNMENT HOUSE,
HALIFAX, N.S., 10th December, 1869.

SIR,—I have the honour to acknowledge the receipt of your despatch, No. 1577, of the 24th ultimo, containing copies of correspondence concerning the Seals of the Provinces of B. N. A. I have also received at the hands of the President of the Privy Council the new Seal of the Province of Nova Scotia. I shall take the first available opportunity of transmitting the old Seal to H.E. the Governor General, in order that it may be returned to the Secretary of State for the Colonies.

I have, &c.,

(Signed) H. DOYLE.

The Honourable
The Secretary of State, Ottawa.

(No. 8.)

GOVERNMENT HOUSE,
HALIFAX, 7th February, 1870.

SIR,—Referring to your despatch, No. 1,577, of the 24th November, transmitting to me the Seal which Her Majesty had been pleased to direct should be used as the Great Seal of the Province of Nova Scotia, and in which also copies were inclosed of

a correspondence between the Imperial and the Dominion Governments concerning the power of altering the Seals of the several Provinces of the Dominion, I have the honour to enclose a copy of a Minute of my Executive Council, deprecating any alteration being made in the Seal heretofore in use in this Province.

I have to request that this document may be brought to the notice of H.E. the Governor General, in order that the same may, if H.E. sees fit, be transmitted to the Secretary of State for the Colonies.

I have, &c.,

(Signed) H. DOYLE.

The Honourable
The Secretary of State, Ottawa.

CIRCULAR.

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 19th March, 1874.

SIR,—I have the honour to transmit to you a copy of a circular despatch from the Right Honourable the Secretary of State for the Colonies, desiring to be furnished with copies of the Armorial Bearings, or Seals of the different Colonies, and to request that you will have the goodness to cause to be forwarded to this Department for transmission to His Lordship two copies or good impressions of the Arms and Seal of the Province of Nova Scotia.

I have the honour to be, Sir,
Your obedient servant,

(Signed) EDWARD J. LANGEVIN,
Under-Secretary of State.

To the Honourable
The Lieutenant-Governor of Nova Scotia,
Halifax, N. S.

CIRCULAR.

DOWNING STREET, 6th February, 1874.

SIR.—An application has been made to this Department by a Mr. Bainbridge, for copies of the Armorial Bearings or Seals of the different Colonies for publication in a work which he is preparing, and which is to contain the Heraldry of England and that of the Colonial Empire.

In order to enable me to comply with Mr. Bainbridge's request and other applications which are frequently made by persons desirous of seeing the Arms or Seals of the Colonies for various purposes, I shall be glad if you will be good enough to send home two copies or good impressions of the Arms or Seals of the Colony under your Government.

I have, &c.,

(Signed) KIMBERLY.

The officer administering the Government of —————

(No. 18.)

GOVERNMENT HOUSE,
HALIFAX, N.S., 30th March, 1874.

SIR,—I have the honour to acknowledge the receipt of your despatch 339-294, of the 19th instant, transmitting a copy of a circular despatch from the Rt. Hon. the Secretary of State for the Colonies, desiring to be furnished with copies of the Armorial Bearings or Seals of the different Colonies.

In accordance with the request contained in your despatch, I now enclose two copies of the Great Seal of this Province.

I have, &c.,

(Signed) A. G. ARCHIBALD,
Lieut.-Governor.

The Honourable

The Secretary of State, Ottawa.

GOVERNMENT HOUSE,
HALIFAX, N. S., 5th March, 1877.

SIR,—Herewith you will receive copy of a despatch from Sir Hastings Doyle, to the Secretary of State, bearing date the 10th December, 1869, and also a copy of a despatch from the same to the same, bearing date the 7th February, 1870; also copy of a despatch from the Under-Secretary of State to myself, bearing date the 19th March, 1874, and of my reply thereto, all having reference to the subject of the Great Seal.

You are desired to lay these papers on the table of the House, in addition to those previously in your possession on the same subject.

On your application a few days ago, I instructed my Private Secretary to make a careful examination of all the papers and documents on this subject to be found at Government House.

You have already received copies of all such papers and documents as he discovered on that occasion.

A reference made in one of these documents to a despatch not appearing among the papers, induced me to undertake a personal examination of the papers, and I am now in a position to say that the documents herewith transmitted, together with those previously sent to you, constitute (so far as I am able to discover after diligent search) the whole correspondence to be found at Government House on the subject of the Great Seal, from the date of the Queen's Warrant on the 1st May, 1869, to the present time.

I have the honour to be, Sir,

Your obedient servant,

(Signed) ADAMS G. ARCHIBALD,
Lieutenant-Governor.

The Honourable

The Provincial Secretary,
&c., &c.

 THE GREAT SEAL.

 SIR WILLIAM YOUNG'S JUDGMENT.

We print to-day the judgment of Sir William Young (concurring in by Judges Des-Barres and McDonald) referred to in our leading article, and will endeavour to publish in future issues the judgments of Judges Wilkins and James:

IN THE SUPREME COURT, 1877.

In the matter of the precedence of J. N. Ritchie as Queen's Counsel.

Several members of the Bar of this Province having been appointed by the Governor General Queen's Counsel, after the 1st July, 1867, when the Dominion Act came into operation, questions arose here and in Ontario as to the appointment and precedence of Queen's Counsel, which resulted in two Acts passed in the latter Province in 1873, Chaps. 3 and 4, and two in our own in 1874, Chaps. 20 and 21. These Acts closely resemble each other, but differ in some particulars. Our chapter 20 affirming the right of the Lieutenant-Governor to appoint Queen's Counsel is a declaratory Act, which the corresponding Ontario Act is not. The second clause of the Ontario Act, chap. 21, enabling the Lieutenant-Governor to grant to any member of the Bar a Patent of precedence in the Courts of that Province is not in ours, though both Acts authorize the issue of such Patents, and all the Acts require that the Letters Patent for the appointment of Queen's Counsel and for the granting of precedence shall be under the Great Seals of their respective Provinces.

The correspondence which led to these Acts is to be found in the Dominion Sessional papers for 1873, No. 50, and it is strange that no reference was made to it in the recent argument of this case. Lord Kimberley's despatch of 1st February, 1872, is a public document, having a significant bearing on the point now before us. After stating that a Lieutenant-Governor appointed since the Union came into effect, had no power to appoint Queen's Counsel, he says, "I am further advised that the Legislature of a Province can confer by Statute on its Lieutenant-Governor the power of such appointment, and with respect to precedence and pre-audience, in the Courts of the Province, the Legislature of the Province has power to decide as between Queen's Counsel appointed by the Governor General and the Lieutenant-Governor, as above explained." It is to be noted that both the Minister of Justice and the Privy Council of Canada recognize the right of Her Majesty directly, as well as through her representative, the Governor General, of selecting from the Bars of the several Provinces her own counsel, and as the fountain of honour, of giving them such precedence and pre-audience in her Courts as she thinks proper. This power, of course, still exists, and it is pointed out by the Privy Council that, when the Supreme Court or other Dominion Courts are established, commissions issued by the Lieutenant-Governor would not, as of right, give precedence or position in those Courts, though it might be advisable that such commissions should be recognized.

Mr. Ritchie's Patent, under the Great Seal of Canada, bears date the 27th December, 1872, and by the uniform practice of our Court he had precedence over all the members of the Bar not holding Patents prior to his own. But by Letters Patent, dated the 26th May, 1876, purporting to be under the Great Seal of the Province, and signed by the Lieutenant-Governor and Provincial Secretary, seventeen members of the Bar were appointed Queen's Counsel for Nova Scotia, and a new order of precedence was established, as it would seem from the recital among the several persons above, that is thereinbefore, appointed, but as it appears from the enumeration, among all the

Queen's Counsel previously appointed since the 1st July, 1867, being thirty-three in all, including Mr. Ritchie, and giving precedence and pre-audience above him to several persons who did not enjoy it before. Upon affidavits disclosing the above and other facts, and producing the original commission and Letters Patent, the rule *nisi* of 3rd of January was granted and the recent arguments were held.

Among the grounds taken in the rule it is urged that the 20th and 21st chapters of the Provincial Acts of 1874 are *ultra vires*, and the appointments under them invalid and of no effect. But the Crown, through its Secretary of State, having authorized such enactments, and the Acts having gone into operation, this contention is quite untenable.

Another objection, however, is of more avail as regards chapter 21, that it has not a retrospective effect. The second section is as follows: "Members of the Bar from time to time appointed after the 1st day of July, 1867, to be Her Majesty's Counsel for the Province, and members of the Bar to whom from time to time Patents of precedence are granted, shall severally have such precedence in such courts as may be assigned to them by Letters Patent, which may be issued by the Lieutenant-Governor under the Great Seal of the Province."

At the argument it was vehemently urged upon us that this clause gave the Executive Government an absolute uncontrolled authority over the members of the Bar, so that the youngest and most inexperienced among them might have precedence over the oldest and most eminent who had not become Queen's Counsel previous to the Union. Sympathizing, as I do, with the reputation and dignity of the Bar, I am unwilling to give to this Act an interpretation so injurious to their feelings and so destructive of their rights. Is the language so strong and so clear as, for the sake of this obvious injustice, to oblige us to give it retrospective operation? Here is a distinction, highly valued, won, in some cases at least, if not in all, by honourable service, and approved by all the world, swept away without fault and without compensation, by giving to an Act of our own Legislature an effect which I think of them too highly to believe that they ever entertained or understood. But what do the true principles of construction teach us as applied to a Statute? Shall the construction of this Act be retro-active or prospective? Shall it apply to the past or only to the future? The maxim *Nova constitutio futuris formam debet imponere non practeritis* adopted by this Court in 1 Oldright, 678, is best illustrated in Sedgwick on Statutory Law, 161—4. A Statute which takes away or impairs any vested right acquired under existing laws is to be deemed retrospective. Statutes should have a prospective effect only, unless the language is so clear and imperative as not to admit of doubt. "The principle," said the English Court in *Moon vs. Dudden*, 2 Exch. 22, "is one of such obvious convenience and justice that it must always be adhered to in the construction of Statutes, unless in cases where there is something on the face of the enactment putting it beyond doubt that the Legislature meant it to operate retrospectively." But I am of opinion that such an intention on the part of our Legislature is by no means clear, and therefore that the Letters Patent, although no question had been raised as to their validity, would not affect Mr. Ritchie's precedence.

But we all know that a very important question did most unexpectedly arise on the first day this case was argued, as to the Seal impressed upon these letters, which many obvious considerations oblige us now to consider. In granting the rule *nisi*, Mr. Ritchie's second affidavit of the 27th December, though mentioned in it, had not been read or considered as of any consequence, and the fact of an old and a new Seal was wholly unknown to the Bench till the argument was opened on the 24th February. The moment it was stated and the Letters Patent exhibited with the old Seal, while the *Canada Gazette* showed that another Seal had been prepared under the Queen's Warrant of 7th May, 1869, it was obvious that here was a point far transcending any question of precedence, and the affidavits of the Hon. Mr. Hill and Mr. Croskill requiring apparently some explanation, we thought it due to them and to the public to postpone the argument for a few days. The Legislature being in session, questions were asked there, and a body of documents was discovered and

printed, which were verified by Mr. Thompson's affidavit of 7th March, and others being expected, we passed the rule of that date, and on the 9th two other affidavits, of Mr. Ritchie and Mr. Weatherbe, came in, and on that and the succeeding day the argument was held. Now, this is a delicate and a difficult question to deal with, and we shall deliberately review it, guarding ourselves against any rash or hasty conclusions. The Royal Warrant of 26th May, 1868, assigning Armorial Bearings to the four Provinces then constituting the Dominion, and to the Dominion a common Seal, to be called the "Great Seal of Canada," and to be composed of the arms of the said four Provinces quartered, was certified by the Registrar of the College of Arms at London on the 21st September, 1868, and a certified copy enclosed by the Colonial Secretary to the Governor-General on the 14th October. On the 8th May, 1869, Lord Granville, referring to a previous despatch not produced, and especially to a despatch of his of the 16th January, transmitted to the Governor-General five Seals for the Dominion of Canada and the four Provinces, with the Queen's Warrant of 7th of May, 1869, directing and requiring that the said Seals shall respectively be used for the sealing of all things whatsoever which shall pass the Great Seals of the Dominion and said four Provinces, and requiring the Governor-General to return the old Seals for the General Government of Canada and the Provincial Governments of the four Provinces, in order to their being defaced by Her Majesty in Her Privy Council. These documents, with the proclamation of the Great Seal of Canada, were published in the *Canada Gazette* of 20th November, 1869, which makes them evidence for all the purposes of this argument, 1 Greenleaf on Evidence, 12 edit. sec. 492; Taylor on Evidence, secs. 12, 1124. The remaining documents are derived from the printed papers communicated to the Assembly on the faith of the Local Government, and their admissibility as evidence may be open to objection, though the peculiar circumstances of this case rendered it indispensable to consider them. On the 2nd July, 1869, the Governor-General enclosed to Lord Granville a Minute of the Minister of Justice, of the 25th June, 1869. It refers to a despatch from the Duke of Buckingham, dated 1st June, 1869, addressed to the Governor-General, with three Seals, for the Dominion of Canada, and the Provinces of Ontario and Quebec, respectively, accompanied by the Queen's Warrant, ordering them to be used until others of a different and more elaborate design shall be substituted for them. The 136th section of the Dominion Act, as to the Seals of Ontario and Quebec, had at this time escaped observation, and there is no reference apparently to the Seals of Nova Scotia and New Brunswick. The Minister of Justice, Sir John A. Macdonald, then proceeds to say: "There can be no doubt that Her Majesty has the sole power to order and to change at will the Great Seal of the Dominion. A question, however, arises whether, under the British North America Act of 1867, and under the altered position of the Provinces caused by that Act, the power to fix the Great Seals of those Provinces does not rest elsewhere," in other words, with the Governor-General. He then refers to the 136th section of the Act. In the reply of Lord Granville, on the 25th August, 1869, after asserting the sole power of Her Majesty to order and to change, at will, the Great Seal of the Dominion, His Lordship adds: "Nor do I entertain any doubt that in Her Majesty alone is vested a like power with respect to the Great Seals of New Brunswick and Nova Scotia." He then suggests what will probably be the most convenient course for the future, adding that he sees no reason, as at present advised, why the power from time to time to alter the Great Seals of all the Provinces should not be vested in the respective Lieutenant-Governors. So ends the correspondence before us as between the Dominion and the Home Government.

And now as to our own Province. Up to this time our Government continued of necessity to use the old Seal transmitted to them at the accession of Her Majesty in 1837. We have no evidence that they had heard of the above correspondence, and no other Seal had been sent to them. The idea broached at the argument that the new Seal became the Great Seal of the Province at the date of the Queen's Warrant of the 7th May, 1869, is untenable. Were it not so, all the functions of Government dependent on the use of the Great Seal—an election writ, for example

—would have been stayed. A duty would have been imposed that there was no means of fulfilling. Now, it is a maxim of the law. *Nemo tenetur ad impossibilia*, or, as the Roman law expresses it, *Impossibilia nulla obligatio est*. Up to this period there is no difficulty.

But, on the 24th November, 1869, Mr. Howe, then Secretary of State at Ottawa, transmits to Sir Hastings Doyle copies of the correspondence and of the Royal Warrant of 26th May, 1868, states that the Great Seal of Nova Scotia will be forwarded on the first fitting opportunity, and winds up with this paragraph: "Upon the delivery into your hands of the Great Seal, you will have the goodness to take measures to carry out Her Majesty's pleasure, as indicated in the accompanying correspondence, by adopting the said Seal as the Great Seal of the Province of Nova Scotia. You will also be pleased to transmit to me the old Seal, with a view to its being returned to Her Majesty for the purpose of being defaced." On the 10th December, 1869, Sir Hastings acknowledges this letter, adding: "I have also received at the hands of the President of the Privy Council, the new Seal of the Province of Nova Scotia. I shall take the first available opportunity of transmitting the old Seal to His Excellency the Governor General, in order that it may be returned to the Secretary of State for the Colonies."

This, however, was not done. The Executive Council of that day passed a Minute, on the 2nd February, 1870, referring to Lord Granville's despatch and the Dominion Act, and concluding thus: "The Council, while freely recognizing the right of Her Majesty the Queen to change and alter the Great Seal of the Province at pleasure, respectfully submit that, as the people are warmly attached to the Seal which for a long period of time was used in sealing all Provincial documents under their old and highly-valued constitution, the Government be permitted to retain the old Seal instead of adopting the new one—a course which will obviate the necessity of either Imperial or Local Legislation on the subject."

This Minute was sent by the Lieutenant-Governor on the 7th February to Mr. Howe, who acknowledged its receipt on the 14th, adding that the letter, with its enclosure, would be brought to the notice of the Governor General, with a view to their being transmitted by him, should he see fit, to the Secretary of State for the Colonies. Whether the letter and its enclosure were transmitted or not does not appear. The above are all the documents to be found in this Province throwing any light upon the subject. The letters of 1874 are of no consequence whatever.

Have the essentials, then, been complied with, or are any formalities wanting to give validity to the new Seal? It was intimated at the argument that the want of a proclamation by the Local Government was fatal. Now, it is true that such a proclamation published in our own *Gazette*, acknowledging and adopting the Seal, would have been a prudent step. This was done by the Dominion Government, and we find, in 1 Hale's *Pleas of the Crown*, 177, the record of a like proclamation directed to the Sheriffs, with an impression of the new Seal in wax, so far back as the reign of Edward III. But I can find no precedent or authority requiring a proclamation to be made. Why should it be required when the Queen's Warrant accompanying the Seal is delivered to her representative, and by him to the officers he appoints, for their direction and guidance?

Towards the close of his address, and rather by way of suggestion than of serious argument, Mr. Haliburton urged that the fact of a Seal being impressed upon the Letters Patent, authenticated as they are by the signatures of the Lieutenant-Governor and the Provincial Secretary, was of itself enough to exclude all inquiry. In other words—that it raised a conclusive presumption which no evidence could shake. Now, I will readily admit that it raises a strong *prima facie* or disputable presumption, which it requires clear and unmistakable evidence to destroy; but I can discover no principle on which, with such evidence to meet it, it is to be received as conclusive. It is true that in many cases, as in the 27th and 30th clauses of our own Evidence Act, cap. 86, Seals purporting to be the Seals of British, foreign and colonial courts are received to authenticate documents. This is by Statute from the necessity of the

case, because otherwise a commission would be required at enormous cost to prove every paper, and a commission would not always avail.

In Greenleaf on Evidence, the second chapter treats of many things that are judicially taken notice of without proof. Among these is the Seal of a Notary Public, he being an officer recognized by the whole commercial world. Were it not so, how could the protest of a bill of exchange in a foreign country, or even in our own, be proved? Foreign Admiralty and Maritime Courts, too, being the Courts of the civilized world and of co-ordinate jurisdiction, are judicially recognized everywhere, and their Seals need not be proved. So also, the Seal of the Probate Court in a Court of law, of which we have examples every day. And by parity of reason, says Greenleaf, I., sec. 503, it would seem that no extraneous proof should be required of the Seal of any department of State or public office established by law, and required or known to have a seal. This presumption arises also out of the maxim of *omnia rite acta*. But it is more than a presumption, and does it extend to the Great Seal of England or of any of her colonies, where it is the emblem of sovereignty—"the only instrument, as Lord Campbell declares, by which, on solemn occasions, the will of the Sovereign can be expressed," and in the eyes of English lawyers, according to Hallam, having a sort of mysterious efficacy?

We had much learned lore submitted to us on the ancient and modern uses and vicissitudes of the Great Seal, into which I have not thought it necessary to enter, but I may borrow from them two illustrations of the point we are now considering. Macaulay, in his history of England (2,428), says that James II, when he fled from the Kingdom he had outraged, took the Great Seal into his hand and as he passed Lambeth, flung it into the midst of the stream, whence, after many months, it was accidentally caught by a fishing net and dragged up. By this manœuvre His Majesty thought that he had effectually defeated the enterprise of the Prince of Orange. In the reign of George III, as Lord Campbell tells us, in his life of Lord Thurlow, his house was broken into by thieves who absconded with some booty, including the Great Seal inclosed in the two bags so often described in the Close Roll, one of leather, the other of silk. A Council was immediately called and by the following day a new Great Seal was made, and next year, in 1785, a third Great Seal was ordered, the stolen one having never been recovered. Now, suppose this stolen Seal, or the Seal cast into the Thames, had fallen into evil hands and been impressed upon a Royal grant of land or forest, would it have carried any weight, would the presumption in its favour have been conclusive? When it is said in Viner, Abr., 17, 71, and in other of the old books, that the Great Seal shall be always credited, and when the certificate under it is not strictly true, there is no remedy but an Act of Parliament or by authority of the Chancellor, it refers to cases where the real Seal is present and is properly used.

Here we have two Seals, the old one impressed upon the Letters Patent, as is admitted in the affidavits of the Provincial Secretary and of his Deputy, who swears, no doubt honestly believing it, "that it is the Great Seal of the Province of Nova Scotia," and we have also the new Seal with the Royal Crown and Armorial Bearings in the Queen's Warrant, forming one of the quarters of the Great Seal of Canada.

But while I speak of it in these terms I must not be understood as viewing with peculiar or superstitious reverence its mere device and form. I have seen contrasts between the two as works of art, and some efforts of a subtle though disguised ridicule, or of a coarser class to disparage the one or the other. But the true way to regard both, each in its turn, is as a symbol of the supremacy of the great Empire to which we owe so much, and of the royal power which claims our affection as well as our obedience. The earliest commissions and instructions to the Governor General, while this Province was in direct communication with the Crown, charged our Governors, while it empowered them "to keep and use the public Seal of the Province for sealing all things whatsoever that shall pass the Great Seal." So it appears in the Journals of our Assembly for 1848 and 1865. The same injunction was repeated, and the same power conferred, in the renewed commission to Lord Monck in 1867 and the Earl of Dufferin in 1872.

So that this Court and the Government and Legislature can in no way escape from the constitutional and substantial issue—which of the two seals after the 10th December, 1869, was the Great Seal of Nova Scotia. It is of no consequence, as far as the point of precedence is concerned, in the view I take of it, whether upon legal principles the seal upon the Letters Patent is to be presumed to be the true seal or no. Upon the evidence in the *Gazette*, were there nothing else, the main question reverts—which of the two Seals is the Seal of this Province? And I am of opinion that the new seal, after its delivery to the Lieutenant-Governor in 1869, became and is now the Great Seal of Nova Scotia, and the only one. I may add that, if this opinion should turn out to be sound, I do not apprehend the evil consequences that have been pictured abroad. A remedy can be found in legislation, from what quarter and in what form it is not for this Court to suggest.

JUDGE WILKINS' JUDGMENT.!

To the Editor of the Morning Chronicle:

SIR,—I send you at your request, my written opinion in the precedence case for publication. The latter part of it, delivered in a spirit of mere pleasantry, and designed to put in good humour some who appeared to be at strife, I had contemplated not publishing; but publication has become indispensable in order that the application and the force of an unmistakable allusion to it in one of your columns of this day's issue may be understood and appreciated. Considering the source whence the allusion has emanated, I cannot trust myself to make one observation on it. What I have referred to as unnecessary for publication under other circumstances will speak for itself. It was, perhaps, delivered unseasonably and in bad taste; but in general estimation it will probably not be regarded as subject to very severe criticism on other grounds.

Yours truly,

(Signed) L. M. WILKINS.

27th March, 1877.

In the matter of the Precedence of Mr. Ritchie.

In my view of the case, it is not necessary for me to consider more than the following ground stated in the *rule nisi* obtained by Mr. Ritchie. It is in terms as follows: "Because the Act of the Local Legislature, namely, chap. 21 of the Acts of 1874, under which certain barristers were appointed Queen's Counsel by the Lieut.-Governor of Nova Scotia, by document or Letters Patent of the 27th of May, 1876, is *ultra vires*." It appears to me that this contention is, on the clearest principles, without foundation. The statute thus questioned has in effect received the royal assent, and Her Majesty must therefore be considered thereby to have empowered her Lieut.-Governor to exercise in her name all the powers purported to be conferred on him by the statute. I am unable to conceive in what respects it can be held to involve legislation *ultra vires*. The subject of our inquiry respects the exercise of a right to appoint Queen's Counsel for the Province. I must regard the statute as perfectly valid; and it appears to me that, when it is construed in the only way in which it can be interpreted, the question of precedence before us is disposed of as a legal consequence. The recital of the statute may be, by adding a few words that I distinguish by brackets, paraphrased thus:—"Whereas the regulation of the Bar in Nova Scotia is vested (*sub modo*) in the Pro-

vincial Legislature, and it is expedient for the orderly conduct of business before the Provincial Courts, that provision be made for the order of precedence of the members of such Bar in such Courts, (but saving all rights of precedence heretofore, at any time granted by Her Majesty, or since the 1st day of July, A.D., 1867, granted by His Excellency the Governor General of Canada, to any member or members of the said Bar.")

The question which we have to decide arises under the second clause of the statute. That clause must be so construed as not to restrict or interfere with any right of precedence at the Bar conferred on any member of it, before the passing of the Act, by the Queen—the acknowledged fountain of honour—or by any one duly authorized to confer it by Her Majesty. No such right can be judicially held to be prejudiced by the clause in question, or by the exercise of an authority under it, without violating those fundamental principles recognized as governing the construction of statutes, viz:—first, that the Sovereign is not bound by a statute by a mere implication of a legislative intention to that effect; secondly, that vested rights are not taken away by legislation without the plainest evidence of an intention to divest them. It cannot be questioned that Her Majesty has, by assenting to this statute, expressly so far parted with Her prerogative right in the subject-matter of the legislation, as to authorize, prospectively, after the passing of the Act, Her Lieutenant-Governor of this Province to exercise it to the extent in which it is necessarily conferred on that high officer by the statute. We are bound so to construe this second clause as, while giving full effect to the clear intention, not to adopt a construction that will derogate from any right which, before the Act came into operation, had been granted by Her Majesty or by an authority duly delegated by Her. The clause, then, must be so construed, as that it shall not be held to have authorized the Lieutenant-Governor to degrade any member of the Bar from that relative position at the Bar which had been specially assigned to him, directly or indirectly, by Her Majesty, in the interval that elapsed between the first day of July, 1867—the date of the Union—and the seventh day of May, A.D., 1874, when the statute in question came into operation. The clause under review may be so construed, and effect will still be given to every word in it.

Sub-section three has expressly saved certain rights in the matter of the legislation—rights conferred up to the day of the Union. No reason can be assigned, why rights of the same nature and derived from the same source and granted up to the time of the operation of the statute, were not intended to be saved also. Now, Mr. Ritchie had been appointed one of Her Majesty's Counsel learned in the law for this Province on the 26th of December, A.D., 1872, by Letters Patent under the Great Seal of the Dominion, by the Governor General in the name of Her Majesty. On His Excellency Her Majesty had before then conferred the right to make such appointments, and by virtue of her undoubted prerogative. Her Majesty's right to do so could no more be questioned than could have been the right granted by Her Majesty to her royal son, the heir apparent, in Her Majesty's name to bestow honours and titular dignities on selected subjects of the "Empress Queen of India," which right His Royal Highness exercised on the occasion of his visit to the East.

Mr. Ritchie's right of precedence at the Bar under the Governor General's Patent, as claimed by him existed, and, in my opinion, remained intact, at and since the passing of the statute, and was not, in any manner, prejudicially affected by the Patent granted by the Lieutenant-Governor. His relative position at the Bar must be governed by the patent that he holds, so long as it remains in force, notwithstanding any Patent or Patents that have been or may be granted by the Lieutenant-Governor of Nova Scotia under the authority of the statute in question.

There is another ground stated in the rule which, in my view of this case already expressed, I am not required to consider. Nevertheless, although it is to me, therefore, a mere abstract question, I feel that for a reason which I shall briefly notice, I ought to do something more than merely glance at it. It respects the validity of the Seal. The same question which has been raised here regarding the legality of the Letters Patent of the Lieutenant-Governor may be raised before one of us on his next

circuit, in the form of an objection to the validity of a Crown grant of land, and resting on that evidence which is before us in the present case. Such grants have probably been issued since the 10th of December, 1869, and under the very Seal which has been affixed to the Patent before us. At the argument of this case, adjourned as it was from time to time, it was only in the last hour of the argument that the point was taken, and by Mr. Haliburton, that the Patent, having been confessedly countersigned by the Lieutenant-Governor and the Provincial Secretary, and sealed with a Seal that on its face purported to be the Seal of the Province of Nova Scotia, carried with it conclusive evidence to this Court of its being what it professed to be, and what, by the officers of the Government charged constitutionally with discretion as to affixing the Great Seal to such a document, it was thus dealt with as being.

Had that point been taken *in limine*, and had it then been insisted that the Court was bound, not merely to take judicial notice of the actual Seal as the Seal of the Province, but to exclude all evidence to the contrary, and had it been further insisted that (fraud, mistake or crime connected with the use of the Seal being excluded from the case, while, on the contrary, the only officers of the Government who could use the genuine legal Seal of the Province for any purpose, had deliberately used the Seal for the particular purpose), I should have hesitated long before I gave my consent to the introduction of the evidence before us, by the force of which it is now contended that the Seal used is proved not to have been, when it was used, the one only Seal that could have been legally used. I am far, however, from regretting that that evidence was admitted. At the same time, while I say this, I distinctly reserve to myself a discretion which, as at present advised, I, as a Judge of this Court, shall exercise as to accepting or rejecting the same or the like evidence in any future analogous case that may arise before me.

The field is large of those acts and things of which an English Superior Court takes judicial notice. It includes high things and things comparatively insignificant. Among the former is the Seal of the Sovereign Power in a State. Of that the public tribunals of every other civilized State take judicial notice and recognize it on inspection, without proof.

There is in the English law, as there was in the Roman law, a well known class of cases of presumptive evidence, which are absolute presumptions of law, which are not permitted to be overcome by any proof that the fact is otherwise. Does this case of a public Seal of a British colony, offered as evidence of a document to which it is affixed, in a British Court of that Colony, range itself within that class of cases?

It must be borne in mind that we are not dealing with the case of a public Seal, criminally counterfeited and criminally abused; or with a genuine Seal used and abused by those who had no right to use it. This case is very different when lawfully constituted Provincial officers have deliberately used, and for a lawful purpose, in Her Majesty's name, this very Seal in question. If this Seal could, under the circumstances, be successfully impugned in this Court, on the ground that another Seal should have been used instead of it—so could it be if the document were offered in evidence, and were assailed by an objection of invalidity, supported by the same evidence, in a Superior Court in Australia. Nay, we must go further, and consider the case of a decree of a High Court of Admiralty pronounced in the State of Massachusetts, offered in evidence in this Court on the authority of the Seal attached to it, purporting to be the Seal of the foreign Court, but objected to on the ground that the Seal, once valid, was no longer so, because another had been substituted by competent legal authority. How would that objection have to be dealt with? But a case is suggested to my mind that may arise in this Court to-morrow, of which the very obvious solution will go a great way to solve the question of validity raised in the present case. A Crown grant of land, as our law and practice now are, involves evidence of an actual contract between the Crown and a subject grantee. When the latter obtains the patent he has paid his money for the land granted. In carrying out that contract to its consummation he has nothing to do with the selection of the Seal to give efficacy to the grant, and constitute evidence of it. He knows not, and he is not supposed to know, whether the proper Seal has been appended to the

patent or not. He sees a Seal with the Royal Arms apparent on its impression, and reads words purporting that the Seal of which he sees the impression is the Seal of the Province. He recognizes the signature of the Lieutenant-Governor and that of the Provincial Secretary as countersigned to the document. He knows, assuming his Patent to have passed since the Union, that no political change took place on that event in the condition of the colony which necessitated a new Seal. He knows that his present Sovereign has had her sacred and valued life prolonged beyond that event, and happily still continues to reign.

In the state of things which I have supposed, would it not be perfectly monstrous to declare judicially, that Patent were relied on in an action of ejectment, that it was void, because (fraud, forgery, crime in relation to the Seal in question, knowingly and deliberately used by the officers of the Government, being out of the case) there was, unknown to the grantee, in existence and accessible to those officers, another Seal that had been legally substituted for the Seal actually used? I might find myself compelled so to rule, but if I so decided, it would be by force of express and irresistible authority. I should reflect in such a case that it was not Her Majesty who was repudiating the Seal attached to a document, issued in her name, and countersigned by her officers—the grant in effect being Her Majesty's grant—but that the validity of the Seal was denied by those who would have an interest in annulling the grant.

Between a Patent granting land and a Patent conferring rank, there can, of course, be, as respects the effect of the Seal, no difference in principle. There is a case of Priestman against Duncan, 3 T. R., 125, which, in my judgment, as respects principles involved in it, bears strongly on the question under review. If a party who paid a large sum of money due to the estate of a deceased person, to a false executor, under probate of a forged will (he being unconscious of the forgery) was held, as he was in that case, to be protected by the probate under Seal of the competent Court from a claim made upon him, afterwards, by the real executor of a true will, for payment of the same debt, because the seal, of the genuineness of which he knew nothing, was his authority to pay to him who, as the event proved, had no right to receive, would that person, on any rational principle, have been less entitled to protection, if the case had been one where the officers who used the particular Seal in the case first referred to had, by mistake or even by design, attached a wrong Seal to the letters testamentary?

In the case before us, the historical cases brought to our notice at the argument, of stolen Great Seals, or of Great Seals flung into the Thames by an abdicating and flying king have, I apprehend, no particular bearing. Indeed, the use of the Great Seal in England is so guarded that, practically speaking, there scarcely exists a possibility of its being improperly used.

On the whole, the impression on my mind is very strong (though, as already observed, I am not called on to give an opinion on the point) that this Court, if required to decide, would be bound to consider the document in question, under the circumstances of the case, to be proved by conclusive force of the very Seal that it bears, the evidence extrinsically introduced notwithstanding.

I feel it proper to add, although I am not required to say anything on the subject, that, as at present advised, on the 10th of December, 1869—when General Doyle announced that a new Seal was in his possession—all legal solemnities would appear to have been observed, that were necessary to substitute for the old Seal a new Seal of the Province by royal authority. This, of course, is expressed in the light of the evidence before me, assuming that I am in possession of all the evidence. I must further observe that, in volunteering this extra-judicial opinion, I disclaim an intention to reflect in any degree on the present, or on preceding Government, in respect to the manner in which the Provincial Seal has been used; and that I do not venture even to intimate to the present Government a course to be pursued by it in relation to the use of the Great Seal of Nova Scotia, or an opinion as to the obligations, past or present, on it, to use either seal. My duty is judicial; its duty is political. Besides that, the Government is more competent than I am to deal with such a question, and I have too great a respect for it to obtrude an opinion upon it. More than that, as I

shall show presently, there is no evidence before us, in any possible view of it, that shows conclusively that any mistake has been made in the application to the Patent in question of the Seal that it bears.

Here my judicial opinion, formed according to the best of my humble judgment, ends, and my judicial functions relatively to the case, in strictness, terminate. But, as obiter and supplemental to that opinion, I cannot forbear from offering a few additional observations which are suggested by some peculiarities which distinguish this case from any and every case that has come before me for judicial consideration. For these observations I alone am responsible. It was said of the celebrated Dean of St. Patrick's that he could write a fine poem on a broomstick. A recollection of that suggested to my mind the thought that it was quite possible to invest a subject not important in itself with an air of transcendent importance. I have not viewed this case, so far at least as this Court is concerned with it, as very momentous. Even looking at the question of the Seal involved in it which respects the Government, it is a question whether they have or have not on this particular occasion used the right Seal. A possible error in that respect is only of public importance so far as it has or may affect rights and interests of the Queen's subjects. I do not think they can be prejudiced by that error if it has been made. Therefore, I do not view the question as one of magnitude. In these days of rapid thought and facile intercommunication, things occurring on this side the Atlantic find their way quickly to the other side of the sea; but I do not apprehend that intelligence received in London of this great question of the day here is likely to affect the price of Consols or to retard the much-desired settlement of the Eastern question.

If a question had been raised as to whether sufficient evidence were before the Court to establish *conclusively* the proposition that the Seal actually affixed to the Patent in question might not be, in effect, the new and substituted Seal referred to in the despatches, *i. e.*, whether the new and unseen Seal in question might not if exhibited prove to be in its character and its die so like the old Seal that an impression made by the one would be identical with an impression made by the other, it might, I say, be found under the evidence before us impossible to decide the question. According to the evidence, *no eye of a deponent has seen the new Seal*. It is referred to in the principal affidavit as the Great Seal of Nova Scotia *as described* in such correspondence and proclamations. But in those *it is not described at all*. The Armorial bearings are described. It is stated that they are, *i. e.*, then were designed to be borne on the Provincial Seal. That they have been introduced into it is mere matter of inference, but nothing more. This question, therefore, is attended with great difficulties. I am unacquainted with the language of heraldry. I have not the benefit of the knowledge of it possessed by Lord Howard. I reflect, however, with pleasure on the fact that in his noble veins runs "the blood of all the Howards." He is, therefore, a nobleman who, I feel assured would, in carrying out officially a Royal command, respect our archaic predilections, if made acquainted with them, and would not have permitted in any Seal prepared for us under his auspices those picturesque associations with our early history which are graven upon our old Seal to disappear upon the die of that which is to replace it. *I should therefore regard as prima facie spurious any new Pretender that did not show those credentials*. To guard against a possible deception like that, I should, as my duty would require, examine with the naked eye and with a lens, the impression apparent upon these Letters Patent; and should have, then, to ask myself this question: Is it quite *certain* that this impression was not made with the new Seal, or with one the impression of which would be the same? He would be a man devoid of taste who would not admire the device of that Seal of which the impression is before us; he would be a bold man who, after a careful inspection of the impression, in the light of the extrinsic evidence, would venture with judicial confidence to assert, in a case that demanded *conclusive* evidence, that it was not made by the old Seal that exactly corresponded with the new Seal.

I have intimated that the older device challenges our admiration. Let me establish that proposition. Direct the eye upon it. We behold the Royal Arms; we discern in the legend the sacred name and the titles of Her Majesty the Queen; we

read "Sigillum Provinciæ Nova Scotia," The old familiar words, "Terræ Marisque Opes," read with their adjuncts, remind us that, while our hearts overflow with loyalty, our natal soil and its surrounding waters overflow, or did once overflow, with wealth, terrestrial and marine. In the back-ground of the picture we have the primeval forest, when as yet not one tree of it had succumbed to the axe of the pale-face. In the fore-ground we have unmistakeably, as he was seen in the flesh, our venerated first Governor, Cornwallis—the only reliable portrait, as our own provincial antiquarian informs me, of that illustrious pioneer of our present high civilization. We here behold him standing proudly on the virgin beach of his recently acquired vice-regal domain, hard by that which is now the *great city* of a *great* people, trembling with *great* anxiety and *great* perplexity about their *Great Seal*. Here he is—the veritable old Governor—with his three-cornered beaver on his head and in the graceful costume of his day. Near him stands one of the aborigines, distinguished as to costume, like "lucus a non lucendo," by a total absence of it. With him the ancient Procurator, there being no common language at their command, is interchanging by dumb-show sentiments that, as material for future history, it would be beyond all price to possess, but which, alas! like the lost Pleiad, are lost to this world forever. Environing these in most felicitous taste, indicating the conception of some great genius, we have a wreath formed by four dolphins gracefully linked together and disporting, not on the sea, but in the air.

Now, here would rise the question: "Can we trace on the face of the impression features that point to an identity between the Seal used and what we may infer from the evidence to be that other Seal which, as is asserted, ought to have been used? This, assuming that we have any evidence of a new Seal, in any other sense than of a new Seal of which we know nothing, would on the whole have to be answered in the affirmative. Assuming even that there exists a new Seal, not identical with the old, the question would be, do we find in this impression "or, on a fesse wavy-azure between three thistles proper, a salmon naiant argent?"

In this language, to interpret which we derive no aid from the black letter, with which we are, or are supposed to be, familiar, there is, of course, much to puzzle the uninitiated. "Or," "Argent" and "Proper" may be at once dismissed from consideration, inasmuch as the Seal was incapable of transmitting *colours* which alone could represent those. Inspecting the impression, my eye at once fixed with almost *asinine* eagerness on one thistle, which is unmistakably there, and being enough of an agriculturalist to know that one of that prolific family is seldom found alone, I searched further, confidently expecting to find the remaining two of the sought-for triad; but in vain, probably from the obscure and undefined character of the impression in a portion of it. That subject of enquiry, therefore, I was obliged to leave undecided. In the picture before us, we have what may be the one or the other of two things—either the canoe of the Mic Mac or a lordly salmon swimming in a silver field. Interposed in the picture, however, between Governor Cornwallis, with the Mic Mac Sachem and the distant forest, seen on the hill of what is now Dartmouth, we have unquestionably the sought-for wavy azure, in a glimpse presented of the "wavy azure," such as heraldry never conceived of our greatest pride, the harbour of Chebucto, that magnificent bay on the bosom of which rode more than a century ago, Admiral Saunder's fleet, bearing onward to Louisburg conquering British arms destined to terminate as they did terminate the sway of the French in what is now British North America. Here one might ask, can it be that a metallic souvenir possessed by Nova Scotia, of all this, so full of interest, on the old Seal has not been reproduced on that new Seal which we have not yet seen? Where is the "*monumentum ære perennius*" to be found if not on the unseen Seal, that shall restore it, and transmit to posterity what the old Seal so eloquently and picturesquely represents? When I see the fact verified on the new Seal placed before my eyes, but not till then, shall I cease to believe in the impossibility of a result so deeply to be deprecated.

My careful examination of the impression, and the discovered aesthetics of its original, which I have very inadequately described, have removed from my mind its first impression of surprise at the hesitation of General Doyle's Council to accept the

new Seal. That surprise has been succeeded by unqualified admiration of the patriotic Cabinet, who appear to have clung with enthusiasm, constitutionally or not, I am not called on to determine—to the old Seal—the time-honoured symbol of country, associated with the hallowed memory of that glory which had just departed from the *haud inamabile regnum* that once owned the vice-regal sway of Cornwallis.

I cannot conclude without offering a word of consolation and cheer to drooping spirits, and I am told there are such within our borders. Of this one thing the provincial lieges may be assured. They may banish all doubts, if they have felt them, as to the legal validity of rights now claimed by them under the Great Seal of Nova Scotia. Above all, let not dismay disturb the repose of connubial hearths. Every couple of heaven-made matches, who have knelt at Hymen's altar since the auspicious nuptials of the Provinces were consummated, may safely indulge in mutual congratulations, and celebrate their silver and their golden weddings, and may, notwithstanding doubts and terrors inspired by the Great Seal question, in common with the sister Provinces of the Dominion, that were once many, but are now "one flesh," exclaim, in the words of the Roman bard—aye, even if the very Seal in question had sealed their unions:—

"Felices ter et amplius,
Quos irupta tenet copula."

JUSTICE JAMES' JUDGMENT.

In Re the Precedence of J. W. Ritchie, Esq. Q.C.

The task which I have now to perform is, I need hardly say, one which I would gladly have avoided. It is to give my opinion in an important case—a case, as it now stands, virtually decided by this honourable Court, of astounding importance. In opposition to that of four Judges—all of them my seniors, and three of venerable age and experience extending over decades of years—and I may well presume, when I consider their ability, learning and experience, that I am wrong in the opinion I am now to deliver. Nevertheless, I have a clear and well-defined opinion on this question, which has been forming and ripening during all the discussions which have taken place. It was but on Saturday afternoon that I became aware, to my great disappointment, that there would be a difference of opinion on the Bench, or that I should occupy the position of being alone in my opinion. Perhaps it would have been better had I accepted the offer so kindly made to me by my learned brethren, of a postponement of the decision in order to enable me to prepare an opinion which would do justice to my own convictions. I have had but a few hours to write my judgment, and therefore have not been able to attain that end, but I may, perhaps, have succeeded in showing that there is at least some reason for the results at which I have arrived.

And first, as to the question of Mr. Ritchie's precedence, independently of its relation to the Seal. The validity of the precedence granted against Mr. Lenoir and others, against which he contends, depends on the validity, effects and construction of two Acts of the Local Parliament which have been already fully referred to. Their validity, or rather their effect in transferring the exercise of the Royal Prerogative, was questioned at the argument, but it has been sustained by the opinions of the learned Judges who have preceded me, in which I am happy to concur, they having already decided that these Acts are not *ultra vires* but that they confer upon, or at least confirm in, the Lieutenant-Governor the right to exercise the Prerogative of the Crown in the appointment of Queen's Counsel, and in regulating the precedence of the Bar of this Province. I do not consider the first of these Acts at all derogating from or transferring the Queen's Prerogative. As the sole fountain of honour throughout her vast dominions, whether on the plains of Hindostan or in the

Province of Nova Scotia, this Prerogative is still vested in her. But by assenting through her representative, the Governor General of this Dominion, to this Act, she has rendered legal the exercise of that Prerogative by her representative in this Province, without her more immediate intervention, either personally or by her officers—this Act, I hold, not to take away her Prerogative, but merely to place the exercise of it in the hands of the Lieutenant-Governor. It is still her Royal Prerogative, by whomsoever it may be legally exercised.

But I think it is obvious from both these Acts that, in transferring the exercise of her prerogative, she intended to do so, and has done so, in a plenary manner. The language of the Acts is as strong, clear and definite as is possible. They profess to give to the Lieutenant-Governor not only the unlimited power of appointing Queen's Counsel, but the unlimited power of regulating the Bar, by giving precedence to such of its members as he shall see fit. I need not enquire whether Her Majesty, by assenting to the first of these Acts, gave up all power of interference with the appointment of Queen's Counsel. Clearly there is nothing on the face of it to restrain the Imperial or Dominion Governments from exercising that power, and there is nothing in the exercise of that power by either of these bodies necessarily conflicting with the power of appointment conferred on the Lieutenant-Governor. But when we come to the question of precedence conferred by the second Act, it is obvious that it is a power which could not be exercised by more than one of these bodies, without the grossest confusion.

It would be ridiculous to suppose that either Her Majesty or the Legislature intended that a scale of precedence should be adopted by the Lieutenant-Governor to-day, to be overruled by another framed in Ottawa to-morrow, and that reversed the next day by a fresh gubernatorial Act in Nova Scotia. Such a state of affairs would be a patent absurdity, which could not be thought of by anybody, and therefore I am clearly of opinion that this Act confers on the Lieutenant-Governor the exclusive right of regulating the precedence of Counsel in this Province.

But to what extent? Can the Lieutenant-Governor only regulate the precedence *inter se* of the Queen's Counsel appointed under that Act? or has he all the power which before the Act was, and still is, vested in the Crown?

I will further observe that the second of these Acts which I have now under consideration is quite general in its language. Its title is "An Act to regulate the precedence of the Bar in Nova Scotia," and its preamble is as follows:—"Whereas the regulation of the Bar in Nova Scotia is vested in the Provincial Legislature, and it is expedient, for the orderly conduct of business before the Provincial Courts, that provision should be made for the order of precedence of the members of the Bar in such Courts."

There is not a word in the title or preamble indicating any intention to limit the operation of the Act; nor is there a word in any part of the Act to limit it or restrain it except the express limitations in the 1st, 2nd and 3rd subsections, giving precedence to the Attorney-General of the Dominion, the Attorney-General of Nova Scotia and the Queen's Council appointed before July 1, 1867. All other Queen's Counsel and other members of the Bar, by words as express as the English language can supply, are entitled to such precedence as the Lieutenant-Governor shall, from time to time, see fit to grant to them, and no more.

But it is objected that this Act, express as is its language, can only refer to such gentlemen as had not received the honorary distinction of the silk, until after the passing of the Act; and that to give a larger construction would be to give it an *ex post facto* operation, so as to interfere with vested rights. If it were so, undoubtedly this would be a valid, if not conclusive, argument against giving the Act the more extended operation which is imported by its clear, express language. But is it the fact that the position of a Queen's Counsel is such a vested right and interest that it cannot be taken away without moral wrong or injustice? If it be, then the precedence of every senior member of the Bar is unjustly interfered with when one of its junior members is elevated by his appointment as Queen's Counsel over his seniors at the Bar. Do we not know—do I need to refer to the abundant authorities

cited on the argument, and numerous others, to show that it is the constant practice for the Crown in England not only to confer these honorary distinctions on junior members of the Bar, by appointing them over their seniors, but to select a particular Barrister or junior Queen's Counsel and give him rank over Queen's Counsel of long standing, with no better reason than the Sovereign's will and pleasure. Is this, then, which is the ordinary usage and practice of the Crown, an immorality? Is it such an act of wrong and injustice that we must presume, rather than permit it, that an Act of Parliament must be held not to mean what it expressly and positively declares?

If it be, then our Sovereign Lady the Queen is in the constant practice of committing the most atrocious acts of injustice, an idea so repugnant, that it appears to me to render my argument conclusive. And not only so, but if this be immoral, then the whole Act from beginning to end is based on a corrupt and dishonest principle, for its whole scope and essence is to enable the Lieutenant-Governor to do the very thing in all time to come that is now complained of as an act of injustice.

It is true that the Sergeants of the Common Pleas in 1840 made a gallant stand for their privileges, when by an order under the Royal Sign Manual their rights of exclusive audience were interfered with, and Barristers from the other courts permitted to plead in that Court with precedence according to their rank and seniority. The position which they assumed was that the court itself as well as the rights of all its officers were of common law origin, and were fixed by immemorial usage and prescription—that the Sergeants were a part of the Court itself, and had been so from time immemorial, and that the Crown by a Royal Mandate could no more abrogate the office of Sergeant or control its privileges than it could take away the Court itself or direct that the Sergeants should be the Judges. And it was contended by Sir William Follet and Mr. Austin on behalf of the Sergeants in arguments of the highest learning and most consummate ability, which I have read with very great pleasure not as in this case that their rights could not be taken away by Acts of Parliament, but that being fixed by the common law they could not be taken away by any lesser authority.

But the case of the Sergeants is an exception. In all the other Courts the power of the Crown to regulate the precedence of the Bar is unlimited. No doubt if this power were exercised in an arbitrary or capricious manner, it would be the subject of grave complaint and dissatisfaction. But such a thing as a Queen's Counsel in England contending that he had a vested right in his precedence, or that to place a junior over his head was *per se* an injustice to him, would be, I venture to say, an unheard of proceeding. I therefore hold with very great deference to the learned and able Judges who have given their opinions, and who are in all probability in the right, that Mr. Ritchie had no vested interest in his precedence as Q.C., any more than any of his seniors may have had when he, in compliment to his great ability and high standing at the Bar, was very properly elevated over their heads to the Inner Bar,—and as I have already endeavoured to maintain the position that Her Majesty intended by that Act to transfer to the Lieutenant-Governor all her prerogative in relation to precedence at the Bar not therein specially excepted, it follows, if I am right in these premises, that this Act, having transferred no power which Her Majesty in person or by her advisers might not justly and legally have exercised, had the Act not passed, no wrong will be done to Mr. Ritchie in holding that the Act is not retrospective in any unjust or improper sense, and therefore ought to be construed according to its plain intent and meaning as expressed by its language.

But then it is contended that the power has not been effectively exercised, because the Great Seal has not been affixed to the Patent as required by the Act—the seal actually affixed to it not being the Great Seal, but one which was formerly in use, and which had then been abrogated. It is sworn on behalf of Mr. Ritchie that the Seal to this Patent is not the Great Seal, and in support of his position he produces the *Canada Gazette* of 20th November, 1869, containing:

1. A despatch from the Duke of Buckingham, Colonial Secretary, to Viscount Monck, the Governor General, dated 14th October, 1863, enclosing,

2. Her Majesty's Warrant under the Sign Manual assigning Armorial Bearings to the Dominion and the Provinces of Quebec, Ontario, Nova Scotia and New Brunswick.

3. A despatch from Earl Granville, Colonial Secretary, dated 8th May, 1869, enclosing Seals for the Dominion and these four Provinces—and also,

4. A second Warrant dated May 7th, 1869, under the Sign Manual, commanding that these Seals should be used and the old Seals returned to the Colonial Office to be defaced.

5. A Minute of the Governor General in Council as follows:—

GOVERNMENT HOUSE,

OTTAWA, Tuesday, 16th Nov., 1869.

Present—His Excellency the Governor General in Council. It is ordered that the Great Seal transmitted by the Right Honourable the Secretary of State for the Colonies with Her Majesty's Warrant, dated the 7th day of May, 1869, shall be used as the Great Seal of the Dominion of Canada for the sealing of all things whatsoever, which shall pass the Great Seal of the said Dominion, on, from and after the date of the present order.

(Signed)

WM. H. LEE.

Clerk Privy Council.

This Minute of Council was immediately published in the *Canada Gazette*. We have here a solemn act of adoption, and a time set for the operation of the new Seal, and full publicity given. There are several things to be noted in connection with this part of the transaction, which are very important and significant.

1. The Seals were sent out in May, and not adopted until November. The Minute of Council imports that the Seal formerly in use for the Dominion had continued to be in use for several months after the arrival of the new Seal with the warrant enjoining its use, and the return of the old Seal. Is it not obvious, if the contention of Counsel for the applicant be correct, that the old Seal of Nova Scotia became invalid, and the new Seal took effect on receipt of the new Seal and the Queen's Warrant at Halifax; then the Governor General of the Dominion for several months used an illegal Great Seal for giving authority to the public acts of the general Government. So this question, if that view be correct, assumes immense importance. It becomes no longer a provincial, but a national question. How many grants were issued, how many loans contracted in the English money market, how many Lieutenant-Governors, and how many Judges were appointed under that illegal Seal it would be curious, and if I am wrong, must become important to enquire. I am happy to say, however, that I am not aware that any of our Lieutenant-Governors or important judicial officers were appointed during that period. But a month or two after the new Seal was adopted, there were two appointments to the Bench. Had these appointments been made a few weeks sooner, the consequences would have been still more serious than they are.

The second circumstance I will note respecting the Minute of Council, is that the authorities of the Dominion evidently considered the old Seal the legal and right Seal, until the new Seal should be formally installed in office by a Government Act. It is a consolation to me in my present isolated position, to know that I have some countenance for my opinion from a quarter where we might expect to find an acquaintance with constitutional law and usage.

And, thirdly, it is to be noted that while the Minute of Council adopts the new Dominion Great Seal, and fixes a day for its coming into operation, it performs no such office for the provincial Seals which it does not even mention. It is obvious that the Governor General in Council purposely left this important duty to be performed by the Lieutenant-Governor.

I need not pursue the history of the matter as it appears by the public despatches submitted to us, further than to say that immediately after the above Minute of

Council and proclamation the new Seal was sent to, and received by General Doyle at Halifax, that the despatches and Queen's Warrant were submitted by him to this Council, that they did not adopt the new Seal, but sought the Royal sanction to continue to use the old one, which they did not obtain, the correspondence appearing to have been dropped, and that in fact it was never adopted or used. It also appeared by Mr. Ritchie's affidavit, which has not been contradicted, that it was in the Provincial Secretary's office at Halifax when he made his affidavit in December last.

In opposition to Mr. Ritchie's case, affidavits were made by the Provincial Secretary and his Deputy, that in their belief the Seal to the Patent was the Great Seal of the Province used and recognized as such, and that they knew of no other Great Seal having been accepted, adopted or used.

There is no doubt that the gentlemen making those affidavits on both sides have stated what they believed to be true. Which of them is correct in point of fact, is a question of law which the Court have to-day to decide.

I ought to observe, however, that the Queen's Warrant was sent by Mr. Howe, Secretary of State for the Provinces, to General Doyle in a despatch dated 24th November, 1869, containing an instruction to him (not to *use* the new Seal but) *to take measures for its adoption* as the Great Seal. The receipt of the despatch and of the new Seal is acknowledged by General Doyle in a despatch to Mr. Howe, dated 10th December, 1869, but it does not mention the date of receipt of either Mr. Howe's despatch or of the Seal. These may have arrived at any time within a fortnight previously.

I have read all the papers and correspondence relating to this matter which have been furnished to us, and also the correspondence published in the Session paper of the House of Commons for 1873, but it is not necessary for my argument to refer to them more than I have already done. I have also carefully examined all the authorities cited.

I find the ancient usage in relation to the adoption of the new Seal and the destruction of the old, thus succinctly stated in Sir Matthew Hale's *Pleas of the Crown*, p. 174:—

"Antiently when there was any change made of the Great Seal there was not only a memorandum thereof made in *dorso clausariae* (a public record of the Lord Chancellor's Court), and a public notification thereof in the Court of Chancery, but public proclamation was made thereof."

And on page 176, after stating that the Great Seal of the last King continues until another be made and delivered to the Lord Keeper by the King, the same eminent authority gives an account of the actual proceeding as follows:—

"The King, by his proclamation bearing date 3rd October, Anno 1, directed to all the Chief Sheriffs of England, signifying that he had made a new Great Seal and that it was to take place from the 4th day of that month of October, sends them the impression in wax of the new Seal, and commands them to publish it, and that after the 4th day of October they should give faith to it and receive no writs but under the new Seal after that day.

"The 4th of October, being Monday, the Bishop of Ely, Chancellor, produces the new Seal and declares the King's pleasure that it should be from thenceforth thus used. The Monday after the old Seal is broken *precipiente rege*, and the pieces delivered to the Spigurnel, (an officer of the Court). And on page 177:—Till a Great new Seal be made the old Seal, being delivered to the keeper, and used and employed as the Great Seal, is the Great Seal of England."

We have here the ancient practice—a practice so ancient as to have all the force of law—of inaugurating the Great Seal by a public specific act, entered in a public record, destroying the old one and making public proclamation of the new, fixing a date for it to assume legal efficacy. The usage is so old that there is no record of its commencement, and it has continued in force through all the ages to the present day, and we find it followed, and I have no doubt rightly followed, by the Governor General of the Dominion in Council. Nay, I have little doubt that if the record of the Executive Council of this Province were searched it would be found to have been the

invariable practice to make a record of the adoption of the new Seal and the return of the old one to the Colonial Office, and also to make a public proclamation of the transaction. It is owing to the strict observance of this custom that no such difficulty appears ever before to have arisen in England or any of her Colonies.

I have not space or opportunity to extract from the books as I would like to do, many curious and interesting items respecting the history of the Great Seal—most of which are to be found in Campbell's *Lives of the Chancellors*. Suffice it to say that the practice, as laid down by Hale, is the public and immemorial usage of the realm. It is as well established as the ceremony of a public coronation of the Sovereign. Nay, far more so, for Sovereigns have often reigned for years, and sometimes through their whole lives, without a public coronation, but there is no single instance to be found in the books all the way back through the centuries of a Great Seal being used or recognized without first being inaugurated by public ceremonies, by a formal public record and public proclamation.

Are these simple ceremonies, this record and this proclamation then idle forms, more honoured in the breach than in the observance? What are we now told, and told most truly? Nothing less than this, that every grant of Crown Land made since 1869, during which periods hundreds of thousands of acres of valuable timber lands have for pecuniary considerations, been granted by Her Majesty to her subjects, are null and void, that public officers may have been appointed and Legislatures convened on what after all turns out to be an illegal Seal? Could this have happened in England? Could a doubt have arisen there as to which of the two Seals was the Great Seal? And yet it is not only contended that many of the most important public acts of our own Government for eight years, but it must follow as a necessary corollary, that many of the most important acts of the Dominion Government for several months are invalid, because a wrong Seal has been used! But if we hold, as I feel myself constrained—perhaps erroneously, but if so, certainly not for want of appreciation of the importance of the subject, and certainly not from any want of industry or care on my part—to hold that the constitutional usages of the Imperial Government in relation to the Great Seal, are a part of the common law, and as such binding on Her Majesty's officers, and in full force for the protection of her subjects in their rights and privileges—then the new Seal could not become operative, nor the old Seal cease to be the Great Seal of the Province, until by a solemn public act of her representative—either the Governor General or the Lieutenant-Governor, who is Her Majesty's Chancellor for this Province—had taken place, a day appointed for the new Seal to come into operation, and the fact proclaimed as was done at Ottawa for the Dominion, in the *Royal Gazette* of the Province.

Of the transactions thus sanctioned by national usage, not the least important is the identification of the precise time at which the new Seal comes into operation. Any doubt as to which of the two Seals, the old or the new were the true Seal, though it lasted but for a single day, would, in a great nation like England, be a grave national misfortune, and therefore we find that in every instance the public record of the transaction which is endorsed upon the close rolls specifies the exact day. But in some instances it goes still further and specified not only the day, but the hour. Here is an example from 2 Campbell's *Lives of the Chancellors*, p. 34 (note):

"Rotula clausorum, 1 Edward VI., Mar., 14. Quomdie circa horam primam post meridiem prefatus Domnus Rex Sigillam suum primam apud palman suum, &c., &c."

From which it appears that on the 14th day of March, in the first year of Our Lord, (1547) the New Seal was delivered by the Duke of Somerest, Lord Protector, in presence of the Infant King, then about six years of age, to the Lord Keeper, and a record made of the transaction. Yet this solemn ceremony so absolutely necessary, so uniformly observed, and so carefully chronicled in England and in this Dominion, is held to be altogether unnecessary here.

It is said that the Royal Warrant was sent out containing Her Majesty's command that the New Seal should be used, and the old one returned to be defaced.

But is this the first Royal Warrant of the kind? I have no doubt whatever that this Warrant, or rather one similar to it, precedes the inauguration of every public

Seal in England and the colonies. These things are done in England upon a regular system and order which continued with only necessary alterations from age to age; and it is probable enough that delays have often before taken place in the fulfilment of their requirements, (just as delays took place both at Ottawa and at Halifax) which have not been handed down to us for the simple reason that they were of no importance whatever until the appropriate inauguration of the New Seal took place in such a manner that all the world could know it, and until the old Seal was deposed from its high position by its absolute destruction or banishment, so that like Midhat Pasha, it could no longer be dangerous, the latter alone was the Great Seal.

It is a well-known French proverb, *Le Roi est mort ! Vive le Roi !* and as it is with the King, so it is with the Great Symbol of his authority, his Royal Seal—the new Seal can no more have credence or authority until the old one is disposed of, than the new King can reign in the life of his predecessor. There cannot be two Kings nor two Seals—nor can there be an interregnum between the old and the new in either case. The Common Law by immemorial usage provides that at the death of one King—at the very moment of his death—his successor begins to reign; and the same Common Law by usage as immemorial, so far as can be ascertained by the public records or from history, provides that the Royal Seal shall exist until its successor is made, is delivered to the first officer of the Crown for safekeeping, is entered of public record and made public. The old one then ceases to operate by its immediate destruction. The two transactions are simultaneous.

But how can this Warrant which we have before us supply the place of these constitutional requirements? In the first place it fixes no time for the important transaction of changing the Seals. We are told that as soon as it arrived the new Seal came into operation. But are we to suppose that so important a transaction, that is, if this warrant be the criterion, would be left by Her Majesty's Secretary for the Colonies to so uncertain a time as the arrival of the Seal in this Province? Suppose the Lieut.-Governor had been absent, or ill, or that he had suddenly died, and nothing could be done until his successor was appointed. Surely Her Majesty's Imperial Ministers would never have left room for a great question as to what was the Great Seal of the Province by any loose and irregular proceeding. The most significant answer to the suggestion is that which actually occurred. We have no record of the day of its arrival here, nor any hint given us that such record exists. It may have been on any day between the 27th November and the 10th December, when its receipt was acknowledged. Which was the Great Seal of the Province during that interval? I asked this question of the learned Queen's Counsel who opened the case on the first discussion of it, and he did not and could not answer it, except by stating that the Seal came into operation on its arrival—which is a *petitio principii*. Yet this is a most important question, as during that fortnight a Legislature might have been convened without any means existing to decide whether it had been called under the authority of an improper Seal. My answer to the question avoids all difficulty.

But let us look at the Warrant itself—and the first thing that strikes us is that not only does it not appoint a day for the new Seal to go into operation, but it does not even say that it is to be adopted or used immediately. Its commands have in fact never been literally disobeyed. In my opinion if the Lieutenant-Governor should take the appropriate means to inaugurate the new Seal to-morrow, Her Majesty's command will have been obeyed. Not, certainly, with any commendable alacrity, and not within a reasonable time, but as there is no limit in the Warrant itself of the day or year in which it was to be obeyed, I think it probable that Her Majesty intended to leave it to some extent to the convenience and discretion of the Local Government. If the law be as I consider it at least ought to be, Her Majesty's Ministers knowing that until properly inaugurated, the Seal was but a bit of harmless brass, and that there need be no haste about the matter, very properly left the date to be fixed and the Seal to be adopted, &c., in the usual constitutional manner, at such time as the Lieutenant-Governor should see fit—the result has been that it was not done at all.

This may have been very improper on the part of General Doyle and his advisers. Her Majesty's commands should certainly have been obeyed in a reasonable time and in a constitutional manner. The objections made to the new Seal by the Minute in Council were childish enough in all conscience. I do not believe, for instance, that the people of this Province had any such violent attachment for their ancient Seal which, after all, was not more ancient than the accession of Her present Majesty—and I have no idea that they would have broken their hearts at the substitution of the new.

Those who committed the offence might have, and perhaps ought to have, received appropriate punishment either from an angry Sovereign or an indignant people; or they might have been compelled, by any gentleman of the Long Robe applying to this Court for a writ of mandamus, to take the necessary steps to adopt the new Seal. Unfortunately, we knew nothing about it, and nothing was done. But the people were innocent, and it is hard that they should be punished for the neglect of Her Majesty's officers by the invalidation of their Legislature and the loss of their lands. If I am right in holding that the usages I have so often referred to are a part of the Common Law of England, then they are the public rights which our fathers brought with them to this Province, and as such they are our inheritance. If they are as such accepted and sanctioned by the Courts of law, as I think they ought to be, then they will operate effectually for the protection of our public and private rights, and our Legislature, our laws, our grants, for the last eight years will not be swept away because Her Majesty's servants were guilty of neglect and mismanagement, and used one bit of brass instead of another as the Great Seal. If I am right, and am held to be right, no injustice will be done, no longer need any excitement or alarm exist. The Imperial Parliament need not be applied to to do what, I fear, they will not do—that is, to pass an *ex post facto* Act, not to give one or two gentlemen precedence at the Bar over two or three others. That is contended to be enough to render it impossible that the Legislature can have intended it; but to take away from hundreds of individuals their legal right to lands which they enjoy merely because the rightful owners have lost their title by an accidental neglect about the Great Seal. I doubt very much whether the Imperial Parliament will pass such an Act. I even hope it may still not be necessary to ask for it; but if asked for I hope it will not be refused.

I am of opinion that this Patent is valid, being sealed with that which is the Great Seal of the Province, authenticated by the signature of its lawful keeper, the Lieut.-Governor and Chancellor of the Province and by his principal Secretary, and, with great hesitation, arising only, however, from a sense of the immense preponderance of experience, learning and ability with which I have in this argument to contend—that the application of Mr. Ritchie for the precedence which he claims should be refused.

TO THE QUEEN'S MOST EXCELLENT MAJESTY:

Most Gracious Sovereign:—

We, Your Majesty's dutiful and loyal subjects, the House of Assembly of Nova Scotia in Legislative Session convened, humbly beg leave to approach Your Majesty for the purpose of representing—

That on the 1st of May, A.D., 1869, Your Gracious Majesty was pleased, by warrant under Royal Sign Manual and Signet, addressed to Sir John Young, then Your Majesty's Governor General of Canada, to transmit among other things a new Great Seal for the Province of Nova Scotia, and to order him to return the old Seal to Your Majesty to be defaced.

That Your Majesty's said Warrant was with the Seal, transmitted to Ottawa by Earl Granville, then Your Majesty's Secretary for the Colonies, in a despatch dated the 8th May, 1869.

That a correspondence thereupon ensued between the Dominion and Imperial Governments, which was brought to a close by a despatch from Lord Granville, dated the 25th August of that year.

That so far as Nova Scotia was concerned no action upon such correspondence was taken by the Dominion Government till the 24th November, 1869, when Mr. Howe, the Secretary of State of the Provinces, transmitted to General Doyle, then Lieutenant-Governor of Nova Scotia, a copy of the said correspondence.

That upon the subject-matter being brought to the then Government of Nova Scotia by General Doyle, the Executive Council of that day passed a minute, dated the 2nd February, 1870, in the words following:

"The Lieutenant Governor submits a communication from the Secretary of State for the Provinces transmitting for the consideration of the Council, a despatch from Earl Granville, the principal Secretary of State for the Colonies, on the subject of altering the Great Seal of the Province of Nova Scotia.

"It appears from the despatch of Earl Granville that the anomalous position in which Nova Scotia is placed, in regard to the Seal of the Province by the Imperial Act confederating the four Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, has not escaped the attention of Her Majesty's Government.

"The British North America Act recognizes the right of the Governor in Council, both in Ontario and Quebec, to alter the Seals of those Provinces; and Earl Granville distinctly states that it is proposed by Imperial Statute or otherwise, to extend the same power to Provinces of Nova Scotia and New Brunswick.

"The Council, while freely recognizing the right of Her Majesty the Queen to change and alter the Great Seal of the Province at pleasure, respectfully submit that, as the people of Nova Scotia are warmly attached to the Seal which, for a long period of time, was used in sealing all Provincial documents under their old and highly-valued constitution, the Government be permitted to retain the old Seal instead of adopting the new one, a course which will obviate the necessity of either Imperial or Local Legislation on the subject."

That a copy of this Minute was duly transmitted by General Doyle to Mr. Howe, who in a despatch dated the 14th February, 1870, acknowledged the receipt of the same, and in reply stated that the Minute and despatch would be brought under the notice of the Governor-General with a view to their being transmitted by him, should he see fit, to the Secretary of State for the Colonies.

That the correspondence with the Government of Nova Scotia having closed with that despatch, we are not aware whether or not the said Minute was ever transmitted as above mentioned, or in any way brought to the notice of Your Majesty.

That a period of six months having elapsed from the time when the warrant was issued before the Government of Nova Scotia was officially informed of the correspondence, during all which time the Warrant remained in abeyance, the then Government of Nova Scotia may have assumed that pending an answer to their petition, embodied in the Minute of Council, the order might still be considered in abeyance.

That, whether acting in that view or not, the Government, in point of fact, made no change in the use of the Seal, and in process of time the matter passed from notice, the Seal now in use being assumed by everybody interested to be valid, till, in a recent proceeding in the Supreme Court, its validity was called in question.

That, arising from the arguments in Court and discussion subsequently in the Legislature, upon the publication of the correspondence transmitted in 1869, there exists at this moment some uneasiness and alarm, which may be greatly increased by the decision of the Court.

That it may be urged that the question of the validity of the Seal touches all the grants of land in Nova Scotia since 1869.

That it touches, it is also affirmed, even the validity of the Assembly itself; of the Acts of the Legislature for two Parliaments, and of Courts of Law and other institutions created thereby.

That Your Majesty's loyal subjects, the members of the present Assembly, were elected without any suspicion on their part, or on the part of their constituents, of

the validity of the Seal attached to the Writs. That, whether technically or not, they were really and virtually the representatives of the well-understood wishes of the people at the time of the elections.

That they have not undertaken to express by resolution any opinion on the legal question before the Court, feeling that any such expression of theirs could have no effect in settling the doubts and uncertainties which have been raised.

That the authority of Your Majesty to change and alter the Seal at pleasure has never been questioned by any previous Government of Nova Scotia, and is not questioned by its present Government.

That Your Gracious Majesty has been pleased to announce through Lord Granville that there seemed to be no reason why the power of altering the Seal from time to time should not be vested in the Lieutenant-Governor in Council.

They therefore approach Your Majesty with the humble request that you will be graciously pleased to take such steps as may be necessary to have an Act passed in the Imperial Parliament giving validity to all Acts, Instruments and things done and passed under the old Seal.

And they further humbly hope that, if Your Gracious Majesty should feel disposed to confirm the proposal contained in Lord Granville's despatch, the power for the future of altering and changing the Seal may be given to the Lieutenant-Governor in Council, whose first act under such authority would be to adopt such Seal as your Majesty shall direct.

In acceding to the humble prayer of Your Majesty's loyal subjects the Assembly of Nova Scotia, you would restore to your loyal subjects the people of Nova Scotia, in a manner that involves the least delay and possesses the greatest authority, the inestimable blessing of confidence in their rights, their properties and their institutions.

COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 5th April, 1877.

Upon the despatch of the Lieutenant-Governor of Nova Scotia, of the 28th ult., with reference to a question which has recently arisen as to the Great Seal of Nova Scotia;

The Hon. the Minister of Justice, to whom this despatch has been referred, recommends:—

1. That a copy of the despatch and its enclosures should be transmitted to the Secretary of State for the Colonies, for the information of Her Majesty's Government.

2. That, as it appears from the papers that the Provincial Government is not aware whether their Minute of the 2nd February, 1870, was ever transmitted to the Secretary of State for the Colonies, the Lieutenant-Governor be informed that it does not appear that the said Minute was ever submitted to the consideration of the Governor General, or that any advice was ever tendered him thereupon, or that the Minute was ever transmitted to the Secretary of State.

3. That the Lieutenant-Governor be informed that, immediately upon receipt of any such addresses to Her Majesty, and to His Excellency, respectively, as are referred to in his despatch, they will be submitted to the consideration of His Excellency, with such advice as may appear proper under the circumstances as then existing.

4. That the Lieutenant-Governor be informed that, in considering the advice to be given upon any such addresses, this Government will endeavour, so far as possible, to meet the wishes of the Government and Legislature of Nova Scotia, and that so far as it may be proper now to express an opinion, there does not appear to be any reason why the prayer of the proposed address to His Excellency should not be complied with.

5. That the Lieutenant-Governor be informed that, as the circumstances now stand, this Government has no suggestions to offer upon the course to be pursued.

The Committee submit the foregoing recommendations for Your Excellency's approval.

(No. 93.)

The Earl of Dufferin to the Earl of Carnarvon..

OTTAWA, 7th April, 1877.

MY LORD,—I have the honour to transmit herewith to your Lordship, a copy of a letter from the Department of the Secretary of State for Canada, covering a communication with enclosures from the Lieutenant-Governor of Nova Scotia, relative to the question which has recently arisen as to the Great Seal of that Province.

I forward in addition a copy of a Minute of Council, touching the same subject.

I have, &c.,

(Signed) DUFFERIN.

The Right Hon.

The Earl of CARNARVON,

&c. &c., &c.

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 7th April, 1877.

SIR,—I have the honour to inform you that your despatch, No. 22, of the 28th ultimo, has received the consideration of His Excellency the Governor General in Council. As it appears from the papers therein enclosed, that the Provincial Government is not aware whether their Minute of the 2nd February, 1870, was ever transmitted to the Secretary of State for the Colonies, I have to state that it does not seem that the said Minute was ever submitted to His Excellency the Governor General, or that any advice was ever tendered him thereupon, or that the Minute was ever transmitted to the Secretary of State.

I have also to inform you that immediately upon receipt of any such addresses to Her Majesty, and to His Excellency respectively, as are referred to in your despatch, they will be submitted for the consideration of His Excellency, with such advice as may be proper under the circumstances as then existing.

I have further to state that, in considering the advice to be given upon any such addresses, the Government of Canada will endeavour, so far as possible, to meet the wishes of the Government and Legislature of Nova Scotia, and that so far as it may be proper now to express an opinion, there does not appear to be any reason why the prayer of the proposed address to His Excellency should not be complied with.

I have to add, that as the circumstances now stand, this Government has no suggestions to offer upon the course to be pursued.

I have, &c.,

(Signed) R. W. SCOTT,

Secretary of State.

To His Honour

The Lieut.-Gov. of Nova Scotia,

Halifax, N.S.

(Canada—No. 102.)

The Earl of Carnarvon to the Earl of Dufferin

DOWNING STREET,
29th March, 1877.

MY LORD,—I have been in communication with the Law Officers of the Crown concerning the question which has arisen in regard to the validity of Acts done under the Great Seal, in use in the Province of Nova Scotia.

2. By the British North America Act, 30 Vic., cap 3 (Sec. 136), it was provided that "until altered by the Lieutenant-Governor in Council, the Great Seals of Ontario and Quebec, respectively, shall be the same, or of the same design, as those used in the Provinces of Upper Canada and Lower Canada, respectively, before their union as the Province of Canada."

3. No such clause as the foregoing appeared to have been considered necessary at the time of the union in the case of Nova Scotia and New Brunswick, but in 1869 it was thought desirable that new Seals should be prepared for the Dominion of Canada, and for the four Provinces then included in the Dominion. New Seals were accordingly prepared, and on the 7th of May a Warrant was passed under the Queen's Sign Manual and Signet, addressed to the Governor-General of the Dominion, authorizing and directing that the said Seals should, respectively, be used for the sealing of all things, whatsoever, which should pass the Great Seals of the Dominion of Canada and Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, and requiring and commanding the return of the old Seals. This Warrant does not appear to have been obeyed in the case of Nova Scotia, where the use of the old Seal has been continued, notwithstanding Her Majesty's instruction; and I learn that it has lately been contended in Nova Scotia that, in consequence of such use of the old Seal, all documents which have passed the Great Seal since the receipt of the new Seal, are invalid.

4. It would seem, however, that this view has not met with universal assent, perhaps, on the ground that it may be contended that the Warrant sending out the new Seal is to be regarded as merely directory, and not as abolishing the old Seal, and that even granting that the Lieutenant-Governor acted wrongly, in disregarding the directions contained in the Warrant, this neglect did not have the effect of making documents sealed with the old Seal invalid.

5. In taking the opinion of the Law Officers upon this question, I explained to them the foregoing circumstances, and I also called their attention to the opinion contained in the concluding paragraph of the Secretary of State's despatch to the Governor General of Canada (No. 169, of the 23rd of August, 1869), to the effect that the assent of the Crown being first obtained, Local Acts afterwards assented to by the Crown would be a legal mode of empowering the alteration of the Great Seals of the Provinces to be made from time to time by the respective Lieutenant-Governors in those Provinces where it was not then legal, but that it might be a shorter and more convenient mode of effecting the same object to pass one Imperial Act; and I requested their opinion upon the following points:—

(1.) Whether the order to use the new Seal contained in the Warrant of the 7th of May, 1869, (of which a copy was forwarded to them with the other documents bearing on this question,) was merely directory, so that a disregard of its injunctions would not have the effect of invalidating documents which were subsequently sealed with the old Seal, or whether the Warrant from the date of its receipt rendered the old Seal of no effect?

(2.) Whether the opinion given in the Secretary of State's despatch above adverted to, to the effect that local legislation with the previous assent of the Crown is competent to empower the Lieutenant-Governor to alter the Seal was correct?

(3.) Assuming that the effect of the Warrant transmitting the new Seal was

from thenceforth to render invalid all documents sealed with the old Seal, whether it is competent for local legislation to validate the past use, contrary to the injunctions of the Warrant of the old Seal, and to make good all documents passed under it and all things done under it?

(4.) Whether it would be competent for Her Majesty, by Letters Patent or Order in Council, to validate the past use of the old Seal, contrary to the injunctions of the Warrant assuming such use to be bad as aforesaid?

(5.) If local legislation is sufficient for all purposes of the case, whether such local legislation should be that of the Dominion Parliament, having regard to the British North America Act 1867, or the Provincial Parliament?

6. I am advised that the order in the Warrant of the 7th May, 1869, to use the new Seals, was merely directory, so that the disregard of its injunctions had not had the effect of invalidating documents which were subsequently sealed with the old Seal.

7. That the Local Legislature, with the previous assent of the Crown, is competent to empower the Lieutenant-Governor to alter the Seal, meaning by the term "Local Legislature" the Legislature of the Dominion.

8. Assuming that the past use of the old Seal has been bad, (which, however, as you will perceive, the Law Officers do not think was the case,) local legislation, *i. e.* legislation by the Dominion Parliament, would be competent to validate the past use, contrary to the injunctions of the Warrant of the old Seal, and to make good all documents passed under it.

9. Though an application to the Dominion Legislature would be recommended under such circumstances, the Law Officers hesitate to say it would not be competent for Her Majesty, by Letters Patent or Orders in Council, to validate the past use of the old Seal, contrary to the injunctions of the Warrant.

10. If local legislation is resorted to, I am advised that it should be the legislation of the Dominion Parliament; and if a Bill is introduced in the Dominion Parliament to authorize the Lieutenant-Governor to alter the Seal from time to time, it will be well as a matter of precaution, and as removing all possibility of doubt, to insert in it a clause declaring all documents sealed with the old Seal to be valid.

I have, &c.,

(Signed) CARNARVON.

Governor General The Right Hon.

The EARL OF DUFFERIN, K.P., G.C.M.G., K.C.B.

DEPARTMENT OF JUSTICE,
OTTAWA, 11th April.

Upon the despatch of the Colonial Secretary to His Excellency of 29th March, 1877, with reference to the Great Seal of Nova Scotia, I beg to report:

The Colonial Secretary has been in effect advised—

1st. That the Order in the Warrant of 7th May, 1869, to use the new Seal was merely directory, so that the disregard of its injunctions has not had the effect of invalidating documents which were subsequently sealed with the old Seal.

2nd. That the Parliament of Canada is competent to pass a law authorising the Lieut.-Governor to alter the Seal; and with a view of removing all possibility of doubt to declare all documents sealed with the old Seal to be valid.

3rd. That such legislation is expedient.

The Lieut.-Governor of Nova Scotia has already communicated to His Excellency the intention of his Government to invite the Legislative bodies of Nova Scotia to address Her Majesty for legislation in the Parliament of the United Kingdom for these purposes; and although no official intimation on the subject has reached the Government yet there is reason to believe that this course is being pursued.

From the public journals it would appear that Bills have been introduced into the Local Legislature of Nova Scotia to the same end.

Had time served, I would have recommended further communication with the Colonial Secretary, with a view to arriving at an understanding as to the legislative body competent to pass the proposed legislation; but in view of the approaching termination of the present Session of the Canadian Parliament this seems impossible; and having regard to the fact that the majority of the Judges of the Supreme Court of Nova Scotia have expressed the opinion that the use of the old Seal is invalid, to the possibility in view of the opinion of the Law Officers that Her Majesty may not be advised to invite legislation in the Parliament of the United Kingdom, to the opinion which has been expressed that the legislative body competent to deal with the question is the Parliament of Canada, and the serious consequences which might ensue were legislative action delayed for a year; I recommend that a Bill be introduced into the Parliament of Canada for the purpose.

Inasmuch, however, as it appears to me to be questionable whether the Parliament of Canada has the suggested power, I recommend that the Bill should be framed so as to indicate the existence of this doubt, and to accomplish the object so far as the same may be within the power of the Parliament of Canada.

I recommend that a copy of the despatch in question, and of this minute, be transmitted to the Lieut-Governor of Nova Scotia.

(Signed)

EDWARD BLAKE.

COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 12th April, 1877.

The Committee of Council have had under consideration the despatch from the Right Honourable Her Majesty's Secretary of State for the Colonies, No. 102, dated 29th March, 1877, with reference to the Great Seal of Nova Scotia; also the report of the Honourable the Minister of Justice, of the 11th April instant, thereon; and they respectfully submit their concurrence in the said report, and advise that a copy thereof and of this Minute be transmitted to Lord Carnarvon, and that a copy thereof and also of the despatch be transmitted to the Lieutenant-Governor of Nova Scotia, as therein recommended.

Certified.

(Signed)

W. A. HIMSWORTH,

Clerk, Privy Council

(No. 108.)

The Earl of Dufferin to the Earl of Carnarvon.

GOVERNMENT HOUSE,

OTTAWA, 12th April, 1877.

MY LORD,—I referred to the Privy Council of Canada a copy of your Lordship's despatch, No. 102, of 29th March last, on the question of the Great Seal of Nova Scotia, and I have the honour to transmit herewith to your Lordship, in reply, a copy of a Minute of Council, showing the steps which my Ministers propose to take in the matter.

I have, &c.,

(Signed)

DUFFERIN.

The Right Honourable
The EARL of CARNARVON,
&c., &c., &c.

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 13th April, 1877.

SIR,—With reference to my letter of the 7th inst, I have the honour to transmit to you herewith, for the information of your Government, a copy of an Order of His Excellency the Governor General in Council and of the report of the Honourable the Minister of Justice, and of the despatch of the Right Honourable the Secretary of State for the Colonies, therein referred to, on the subject of the Great Seal of the Province of Nova Scotia.

I have, &c.,

(Signed) R. W. SCOTT,
Secretary of State.

To His Honour
The Lieutenant-Governor of Nova Scotia,
Halifax, N. S.

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